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Monterey, California



THESIS

**A MODEL FOR THE EFFECTIVE INTEGRATION OF
PAST PERFORMANCE INFORMATION INTO
ORGANIZATIONAL ACQUISITION AND CONTRACTING
PROCESSES**

by

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December 2000

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PERFORMANCE INFORMATION INTO ORGANIZATIONAL ACQUISITION
AND CONTRACTING PROCESSES**

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ABSTRACT

The need to deliver high quality goods and services in less time and at a lower total cost has resulted in a Revolution in Business Affairs throughout the Federal acquisition community. When the lowest price is not the driving factor during procurements, the Federal Acquisition Regulation allows procurement officials to make trade-offs between cost or price, past performance, and technical merit to ensure the best value to the Government. One of the tools that Government procurement officials have for reducing procurement risk is the ability to request, via the request for proposal, information regarding a supplier's past performance and to use this information in selecting sources of supply.

This thesis investigates the use of past performance information in the Federal acquisition process. It reviews the current policies and best practices for the collection and evaluation of past performance information. It then categorizes and analyzes the past performance protest decisions handed down by the Comptroller General from October 1, 1997, to June 30, 2000. Following the review and analysis, the overall best practices and case principles are linked with the phases of the Federal acquisition process to develop a managerial model that will aid contracting officials in more effectively incorporating the use of past performance information into their acquisition and contracting processes.

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I. INTRODUCTION

A. PURPOSE

This thesis investigates the use of past performance information in the Federal acquisition process. It reviews the current policies and best practices for the collection and evaluation of past performance information. It then categorizes and analyzes the past performance protest decisions handed down by the Comptroller General from October 1, 1997, to June 30, 2000. Following the review and analysis, the overall best practices and case principles are linked with the phases of the Federal acquisition process to develop a managerial model that will aid contracting officials in more effectively incorporating the use of past performance information into their acquisition and contracting processes.

B. BACKGROUND

The need to deliver high quality goods and services in less time and at a lower total cost has resulted in a Revolution in Business Affairs throughout the Federal acquisition community. The thrust of this movement is that Government procurement actions should be modeled more along the lines of corporate America. As corporations focus more on their core functions, they are becoming increasingly dependent upon stables of reliable and preferred suppliers as a way to reduce procurement risk. However, because of Governmental concerns for competition and socio-economic programs, Federal procurement officials are often unable to follow the corporate world's lead with respect to preferred suppliers.

One of the tools that Government procurement officials have for reducing procurement risk is the ability to request, via the request for proposal (RFP), information regarding a supplier's past performance and to use this information in determining and selecting sources of supply. When the lowest price is not the driving factor during procurements, the Federal Acquisition Regulation (FAR) allows procurement officials to make best value determinations: trade-offs between cost or price, past performance, and technical merit to ensure the best value to the Government.

Best value in negotiated acquisitions may be obtained by using any one or a combination of source selection approaches. In different types of acquisitions, the relative importance of cost or price may vary. For example, in acquisitions where the requirement is clearly definable and the risk of unsuccessful contract performance is minimal, cost or price may play a dominant role in source selection. The less definitive the requirement, the more development work required, or the greater the performance risk, the more technical or past performance considerations may play a dominant role in source selection.

While the FAR provides contracting officials with direction on the use of past performance as an evaluation criterion, the FAR provides very little guidance on how contracting officials are to evaluate past performance. In the absence of any standardized process or norms, the evaluation of past performance may become subjective in nature.

C. RESEARCH OBJECTIVE

The primary objective of this research is to develop a managerial model that will aid contracting officials in their efforts to more effectively implement the collection and

use of past performance information. The model will be developed after reviewing the current policies and best practices guides for the collection and evaluation of past performance information, and then categorizing and analyzing the past performance protest decisions handed down by the Comptroller General from October 1, 1997, to June 30, 2000. Following the analysis of these cases, the overall best practices and case principles will be linked with the phases of the Federal acquisition process.

D. RESEARCH QUESTIONS

1. Primary Research Question

What will an analysis of published best practices guides and Comptroller General case decisions suggest are the general principles and best overall practices for effective past performance information management, and how can these principles and best practices be integrated into the acquisition and contracting processes of a buying activity?

2. Secondary Research Questions

- How have policies evolved with respect to past performance?
- What best practice guides are available that provide guidance on the collection and evaluation of past performance?
- What are the recommended methods for the evaluation of past performance?
- How does industry view the use of past performance in source selections?
- Under what circumstances is an offeror likely to file a protest over the use of past performance information by a Federal acquisition professional?
- What are the discernable trends in the number of sustained protests involving past performance in recent years?
- What elements of the acquisition contracting process will the Comptroller General review in making his decisions?

- What case principles can be extracted from the Comptroller General decisions that would aid contracting officials throughout the acquisition process?

E. SCOPE

The scope of this thesis will include:

- A review of the policies on the collection and use of past performance.
- An in-depth review of best practices guides with the aim of extracting key principles.
- An in-depth analysis of the Comptroller General's decisions in cases involving past performance to identify trends and case principles.
- The development of a managerial model that integrates the case principles from the Comptroller General's decisions with the acquisition contracting process.

This thesis will be limited to protests that involve past performance as an element of the protest that have occurred from October 1, 1997, to June 30, 2000. The primary assumption in this study is that the reader is familiar with the basic Federal acquisition contracting process.

F. METHODOLOGY

The research for this thesis will consist of the following steps:

- Conduct a literature search of books, magazine articles, studies, and other library information resources that deal with the subject of past performance.
- Conduct a survey of several major contractors to gain a sense of industry's views on the use of past performance by Government contracting officials.
- Conduct a search of the General Accounting Office database for protest cases that involved past performance as an element of the protest.
- Identify trends or key elements that will allow the cases to be categorized and analyzed.
- Develop a managerial model that integrates the acquisition contract process with principles extracted from best practice guides and case principles derived from the Comptroller General's rulings.

G. BENEFITS OF THE RESEARCH

The collection and evaluation of past performance information and the determination of best value are some of the most subjective areas in Government contracting. The lessons contained in the best practices guides and the lessons learned from the Comptroller General's decisions are applicable to all Federal Government contracting officials. The model developed in this study is intended to assist Government contracting officials in more effectively incorporating the use of past performance into their acquisition and contracting processes.

H. ORGANIZATION OF THE THESIS

Following this introductory chapter, Chapter II provides the current working definition of past performance information. The chapter then provides background information on the evolution of procurement policies with respect to the collection and evaluation of past performance information. It also touches on some of the current issues surrounding the collection and use of past performance information. Chapters III and IV are the analytical heart of the thesis. Chapter III begins with a review and comparative analysis of several best practices guides. The intent is to identify key best practices principles for the collection and use of past performance that can be applied to a model of the Federal procurement process. Next, the chapter covers the findings of an industry survey conducted by the researcher. The findings are used to gain a sense of how industry views the use of past performance information in Federal acquisitions. The findings also highlight the risks associated with the use of past performance (e.g., under what conditions is an unsuccessful offeror more likely to file a protest involving the collection and evaluation of past performance?). Chapter IV begins with an overall study of past

performance protests brought before the Comptroller General from October 1997 through June 2000. Past performance protests are categorized, reviewed, and analyzed with the intent of identifying case principles as they apply to the Federal acquisition process. Chapter V introduces the integrated managerial model that was developed during the study. The model links the key best practices principles and Comptroller General case principles with the Federal acquisition process. Chapter VI provides the answers to the research questions, and it includes the researcher's recommendations for areas of further research.

II. BACKGROUND

A. PAST PERFORMANCE: DEFINITION AND CLARIFICATION

Past performance information is one indicator of an offeror's ability to successfully complete Government contracts.

Past performance information is relevant information, for future source selection purposes, regarding a contractor's actions under previously awarded contracts. It includes, for example, the contractor's record of conforming to contract requirements and to standards of good workmanship; the contractor's record of forecasting and controlling costs; the contractor's adherence to contract schedules, including the administrative aspects of performance; the contractor's history of reasonable and cooperative behavior and commitment to customer satisfaction; and generally, the contractor's business-like concern for the interest of the customer. [Ref. 16:42.1501]

While knowledge of the working definition of past performance is a must for acquisition professionals, they must also keep in mind the difference between performance risk and proposal risk. Proposal risk is associated with an offeror's proposed approach in meeting the Government's requirements and may be integrated into the analysis of each specific evaluation factor or sub-factor. Performance risk is associated with an offeror's likelihood of success in performing the Government's requirements as indicated by that offeror's record of past performance. [Ref. 3]

It is also important to recognize the difference between past performance and experience. "Experience reflects whether contractors have performed similar work before. Past performance, on the other hand, describes how well contractors have performed the work." [Ref. 13:p. 7] As an example, a company may have twenty years

experience in producing an item, but it can still have a poor performance record with respect to cost, quality, and delivery.

B. EVOLUTION OF POLICIES

The Office of Federal Procurement Policy (OFPP) Policy Letter 92-5 [Ref. 34] set in motion the events that have evolved into today's more standardized approach by Federal procurement agencies for the collection, recording, and utilization of past performance information. In its letter, OFPP recognized the importance of past performance information as a tool to aid in the source selection process and to "improve contractor performance." Two major requirements that were levied on Federal agencies were:

- Newly established firms were to be allowed to compete for contracts even though they lacked a history of past performance
- Past performance was to be used as an evaluation factor in all competitively negotiated contracts expected to exceed \$100,000 [Ref. 34: pp. 2-3]

OFPP also recognized that guiding requirements were necessary to ensure *integrity* and *fairness*. OFPP looked to the FAR Council for implementation of these policies. OFPP mandated that the policy changes addressed in OFPP Policy Letter 92-5 were to be incorporated into the Federal Acquisition Regulation within 210 days. [Ref. 34:p. 5] However, the Federal Acquisition Streamlining Act (FASA) of 1994 made the OFPP requirements a law, and the FAR Council released Federal Acquisition Circular (FAC) 90-26. This Circular became effective on May 30, 1995, and it stated that past performance must be a mandatory evaluation factor for all solicitations with an estimated value of:

- \$1,000,000 issued on or after July 1, 1995
- \$500,000 issued on or after July 1, 1997
- \$100,000 issued on or after January 1, 1999

After almost eight years, through various rewrites to the Federal Acquisition Regulation, the policies envisioned in OFPP 92-5 have been met. The Federal Acquisition Regulation's Statement of Guiding Principles now reflects this emphasis on the use of past performance by stating that:

The Federal Acquisition System will satisfy the needs of its customers in terms of cost, quality and timeliness by... using contractors who have a track record of successful past performance or who demonstrate a current superior ability to perform. [Ref. 16:1.102/102-1]

When FAC 97-02 implementing the FAR Part 15 (Contracting by Negotiation) rewrite was issued on September 30, 1997, it placed several requirements on Federal acquisition professionals. FAR Part 15 now requires that past performance information shall be evaluated in all source selections for negotiated competitive acquisitions issued on or after January 1, 1999, for acquisitions expected to exceed \$100,000 unless the contracting officer documents the reasons why past performance is not an appropriate evaluation factor. FAR Part 42 (Contract Administration and Audit Services) also requires that past performance information is to be collected and retained for a period of three years for all acquisitions over \$100,000.

C. RECENT DEVELOPMENTS

In December 1999, the Department of Defense released a report on Price-Based Acquisition (PBA). The report was in response to Congress' direction in Section 912(c)

of The National Defense Authorization Act of Fiscal Year 1998, which directed the Department of Defense to identify additional key steps that DoD could and should take to build upon and enhance previous acquisition reforms. The committee on PBA looked at initiatives that would enhance the use of price-based procurements in Federal programs. PBA reduces the burden on prospective offerors by relieving them of the requirement to provide certified cost and pricing data. The report recommended numerous initiatives to continue the current Revolution in Business Affairs. With regard to past performance the report recommended that:

Past performance be, as a matter of Department-wide policy, at least equal to the highest ranking factor in every DoD source selection valued at more than \$1 million, unless waived by the Head of the Contracting Activity (HCA) for a specific exception. [Ref. 36:p. PS-7]

The committee that drafted the report viewed this possible policy change as an enabler for expanding the use of PBA, and encouraging offerors to be more realistic in their promises and pricing.

On June 2, 2000, The Honorable Jacques S. Gansler, the Under Secretary of Defense for Acquisition, Technology, and Logistics released the report titled "The Road Ahead." As an element of the continuing Revolution in Business Affairs, the paper points out that the "Department of Defense will increasingly rely on an integrated civil-military industrial base in lieu of a defense-unique industrial base." [Ref. 44:p. 11] One of the steps for achieving the goal of an integrated industrial base is the establishment of "strategic alliance relationships among buying commands and suppliers." [Ref. 44:p. 11] The expectation is that Federal procurement agencies will gain greater insight into the

commercial world's best practices, one of which is the use of past performance in source selections.

Recently two articles have appeared that indicate that over the last five years, since the requirements for the collection and use of past performance information have become mandatory, Federal procurement agencies have not successfully institutionalized its use. The first article appeared in the journal Contract Management. In his article "Past Performance is Not Working," Joseph Beausoleil points out that less than 20 percent of the contracts that were completed in 1998 and 1999 were evaluated in a way that met the FAR requirements. [Ref. 4:p. 29] This article maintains that the current process for the post-award collection and evaluation of contractor performance is too cumbersome in today's Federal acquisition environment, and for the process to be effective it must be streamlined.

The second article appeared in the Philadelphia Inquirer on July 24, 2000. In their article "Firms That Defrauded U.S. Still Getting Government Contracts," John Solomon and Katherine Pflieger identified 1,020 companies that were sued or prosecuted for fraud over the last five years. By checking the master list of companies that are barred from Federal business, they found that 737 of these companies were still eligible for future contracts. [Ref. 37] In their conclusion, they point out that several of these companies have subsequently won contract awards. The article paints a picture of a procurement process that places little value on an offeror's past performance.

D. SUMMARY

The tone of these two articles is that the Federal acquisition workforce is struggling with the requirements for the collection and evaluation of past performance information. This view is supported by a 1999 General Accounting Office Report "Best Practices: DoD Training Can Do More to Help Weapons Systems Programs Implement Best Practices." GAO investigated the implementation of five current best practices (past performance, cost as an independent variable, performance specifications, integrated product teams, and supplier relationships) at six program offices. None of the six program offices was considered a leader in all five practices, but they were chosen because they represented best-case examples for one or more of the specific practices.

The report points out that over the last five years, "over 40 initiatives have been introduced to the DoD acquisition work force, without delineating which are the most important for weapons systems programs." [Ref. 6:p. 59] The report further notes that:

The Defense Acquisition University incorporates best practice topics into DAWIA courses as drop in modules that provide a survey of the topic. The information conveyed is enough to provide a general awareness of the concept but not enough to implement the practice at the workplace. [Ref. 6:p. 45]

To augment the training that has been available, numerous agencies have published best practices guides to assist Federal procurement professionals in understanding not only the requirements for the collection and use of past performance information, but also how to go about implementing the requirements into their day to day operations.

In the eight years since the release of OFPP Policy Letter 92-5, Federal procurement personnel have had to wrestle with the requirements for the collection and use of past performance information, even as they have seen policy makers placing increased emphasis on its use in source selections. The regulatory requirements for the collection and use of past performance information are now statutory requirements that are codified in the Federal Acquisition Regulation. If, as Dr. Gansler notes, "the road ahead is clear," [Ref. 44] then these requirements will become more stringent as the Federal acquisition community adopts more of the Commercial Market's best business practices.

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III. BEST PRACTICES AND A SENSE OF INDUSTRY

A. INTRODUCTION

This chapter reviews five best practices guides with the goal of identifying the key principles for applying best practices associated with past performance information. It then reports the results of a survey of industry representatives, to gain a sense of how industry views the use of past performance information by Government acquisition professionals.

B. BEST PRACTICES GUIDES AND BEST PRACTICES

For the purposes of this thesis, a best practice is defined as a method of accomplishing an acquisition function or process that is considered to be superior to other methods. Best practices are developed through experience and lessons learned, and when successfully identified and applied, best practices can reduce costs and improve organizational efficiency.

Since 1995 numerous best practices guides and handbooks have been developed to assist the Government acquisition workforce implement policies for the collection and use of past performance information.

Five guides were reviewed:

- Best Practices for Collecting and Using Current and Past Performance Information, Office of Federal Procurement Policy, 1995 & 2000
- U.S. Marine Corps Best Value Source Selection Handbook, Marine Corps Systems Command, 1997

- Army Material Command (AMC) Pamphlet 715-3, Contracting for Best Value: A Best Practices Guide to Source Selection. Army Material Command, 1998
- A Guide to Collection and Use of Past Performance Information, Department of Defense, 1999
- Source Selection Activities Guide (Performance Risk Assessment Group (PRAG)) Guide, Air Force Material Command, 2000

The review focused on: how relevant each guide is to the current acquisition environment, how reliable and up-to-date the information contained in the guide is, and how responsive the guide is to the needs of the acquisition workforce. Plainly put, the criteria for reviewing these guides were:

- How clearly is the information presented?
- How current or up-to-date is the information contained in the guide?
- What phases of the acquisition process does the guide address?
- Does the guide provide information that can be used in day-to-day operations?

Alone, each of these guides provides valuable guidance for the use of past performance information (PPI). Together they identify a comprehensive list of key best practices for the collection and use of PPI throughout the entire Federal acquisition process.

1. Best Practices & Best Value Guides

The Office of Federal Procurement Policy's Best Practices Guide was originally released as an interim guide in May 1995, and the final edition was released in May 2000. It is a well-written thirty-two-page document that presents techniques and practices for working level acquisition professionals. The goal of the guide is to assist Federal acquisition agencies in reaping the benefits of:

- Better contract performance because of dialog between the contractor and the Government
- Better ability to select high quality contractors for new contracts, because contractors know the assessments will be used in future award decisions [Ref. 5:p. 2]

Its main focus is on purchases above the simplified acquisition threshold (SAT) of \$100,000. However, it points out that FAR Part 13 allows Contracting Officers to use whatever information is available to them about an offeror's past performance to make award decisions.

The guide has only three chapters: Introduction, Evaluating and Recording Current Performance, and Using Current and Past Performance as a Source Selection Factor. Each chapter provides tips, hints, and examples for use of best practices. This guide is a good starting point for anyone interested in how to collect and use PPI.

The Marine Corps' Best Value Handbook was released in 1997, and its stated purpose is:

To provide guidance and assist Marine Corps Systems Command acquisition personnel in understanding the procedures of the source selection process for competitively negotiated acquisitions where selection is based on technical and other factors in addition to price. [Ref. 45:p. 4]

The handbook covers the elements of the Federal acquisition process from the formation of the Acquisition Team through the debriefing of the unsuccessful offerors. It is rather lengthy (fifty-four pages), and it is broken-down into eight chapters:

- General Information
- Roles & Responsibilities
- Source Selection Plan
- Best Value Procurement

- Conducting the Evaluation
- Request for Proposals
- Post-Evaluation Actions
- Debriefing

While the format of the handbook is straightforward, the writing style is not as smooth as other guides, and at times it contradicts itself. For example, in Chapter III under the heading of Rating Systems, it states that numerical ratings with narratives are the most useful method for the evaluation and the documentation of past performance. [Ref. 45:p. 14] Then in Chapter IV under Lessons Learned, it points out “the formula approach to best value has fallen into disfavor because it may lock the selection official to the highest scored proposal....” [Ref. 45:p. 26]

Another shortfall of the handbook is that it has not kept up with current policy changes. Most notably, it has not been updated to incorporate the requirements of the FAR Part 15 rewrite released in 1997. While past performance has been a mandatory evaluation factor for all negotiated competitive acquisitions over \$100,000 since January 1, 1999, the handbook advises Marine acquisition professionals that “The Government must always take into consideration the mandatory factors: cost and price, and soon past performance.” [Ref. 45:p. 26]

Despite its noticeable flaws, this handbook still provides useful techniques and practices for the collection and use of PPI. With editing and updating to incorporate the latest acquisition reform initiatives, this handbook would be one of the most comprehensive guides available.

AMC Pamphlet 715-3, Contracting for Best Value: A Best Practices Guide to Source Selection was published in January 1998. The guide was designed "for use by the entire acquisition workforce to promote consistent understanding of best value and the various processes and techniques that can be used to achieve it." [Ref. 2:p. 1] Prior to its release the guide was updated to reflect the latest acquisition reform initiatives, most notably the rewrite of FAR Part 15. The researcher found this guide to be the most comprehensive in terms of scope of applicability. It is composed of ten sections:

- Overview
- Planning for Source Selection
- Drafting the Source Selection/Evaluation Plan
- Solicitation
- Evaluation Considerations
- Selection Decision
- Notification and Debriefing of Unsuccessful Offerors
- Lessons Learned
- Top Ten Messages
- Appendices

While AMC pamphlet 715-3 is long in comparison to the other guides reviewed, it has a flow that makes it easy to read and understand. Throughout the guide, key points and ideas are centered and highlighted to draw the reader's attention. Overall, the researcher found this guide to be the most useful best practices guide available to the acquisition workforce for the collection and use of PPI.

The Department of Defense's "A Guide to Collection and Use of Past Performance Information" was released in May 1999. It is intended for use by the entire

acquisition workforce in both Government and industry to promote the goal of achieving “best value.” [Ref. 13:p. ii] The guide is broken down into four sections:

- Introduction
- Obtaining Past Performance Information
- Use of Past Performance Information in Source Selection
- Appendices

The guide highlights best practices for the use of PPI during source selections and the collection of PPI during post-award performance. Like the OFPP guide, it is a relatively short document; it is composed of sixteen pages of text and nineteen pages of appendices that cover areas such as definitions, references, and common DoD assessment rating schemes. The writing is clear and well structured. Key concepts are highlighted and offset. Again like the OFPP guide, it is a good starting point for anyone who is interested in learning how to collect and use past performance information throughout the Federal acquisition process.

While the previous guides focused on the best practices for the collection and use of past performance information by the overall acquisition team or workforce, the Air Force’s Source Selection Activities Guide focuses on the actions of the Performance Risk Assessment Group (PRAG). The PRAG is one of the teams of the Source Selection Evaluation Board (SSEB). It is the team within the source selection organization that is tasked with assessing the relevant past and present performance information and assigning a performance confidence rating. [Ref. 38:p. 2] The Source Selection Activities Guide is a short fourteen-page document that covers the steps for the collection and use of past performance information from prior to release of the request for proposals to the

documentation and briefing of the PRAG's analysis. [Ref. 38:p. 1] The guide has five major sections:

- PRAG Source Selection Guide: Introduction
- Prior to Release of Requests for Proposals (RFP)
- Prior to Receipt of Proposals
- After Receipt of Proposals
- After Analysis of Data

The information presented in each section flows smoothly from one key point to another. However, one drawback is that the drafters of the guide use several Service-unique acquisition terms that will be unfamiliar to the non-Air Force reader (e.g., the Procuring Contracting Officer (PCO) is called the Source Selection Focal Point, and past performance sub-factors are called Mission Capability sub-factors).

The review of these guides suggests that to remain effective, they must be living documents. While it may be difficult to keep them current with the rapidly changing acquisition environment, the stakeholders of these guides must invest the time and energy to keep them relevant to the current acquisition environment and responsive to the needs of the acquisition professionals who use them. While each guide presented a slightly different perspective on the use and collection of PPI, there are best practices that transcend each Service or Department.

2. Best Practices

In developing a comprehensive list of best practices (BP) for the collection and use of PPI, the researcher examined the BPs presented in each guide. The first criterion for making the list was consensus among the guides. Not every guide covered the same phases of the acquisition process, but there was sufficient overlap, so that the researcher

found that most of the guides provided clarification, justification, and amplification for the use of a BP. The second criterion for making the list was the prudent businessman concept. When a BP was addressed in only one guide the researcher made the judgment call on whether a prudent businessman would make use of the practice. The researcher had to ask himself the question, "Did the practice make sense, and what were the benefits of using the practice?" By combining BPs from each of the guides, the researcher has composed a list of what he judges to be the top eleven BP's for the collection and use of PPI. The list is presented here and it is included as Appendix "A" for easier reference later.

- (BP1). Tailor the use and evaluation of past performance information to fit the needs of the acquisition.
 - Weight past performance to ensure that it is a valid discriminator
 - Limit sub-factors to true discriminators. Recommended sub-factors are:
 - Quality of performance
 - Cost performance
 - Schedule performance
 - Business Relations
- (BP2) Invest in command or program resources needed for a competent and well documented best value source selection.
 - Include the source selection authority as an active participant
 - Train all the evaluators in best practices
- (BP3) Conduct pre-solicitation exchanges of information with industry to explain the approach you will use to evaluate performance risk. (e.g., draft solicitations & pre-solicitation conferences)
 - Pre-solicitation exchanges can help to ensure that potential offerors have a clear understanding of how past performance will be evaluated

- (BP4) Structure the solicitation to communicate effectively to potential offerors.
 - Encourage new entrants to the market to identify other related PPI
- (BP5) Use the most relevant, recent PPI available in making the source selection decision. PPI can come from a variety of sources.
 - Other Federal Agencies and Government databases
 - State and Local Governments
 - Commercial contractors
 - References provided by the offeror
 - Quality certificates and awards
- (BP6) Conduct reference checks and look for patterns or trends. Whenever possible request two points of contact (POC) for each reference. Use:
 - Questionnaires
 - Face to face interviews. Keep in mind that these provide more insight than other methods; they can expose problems with the contractor that can be discussed during negotiations
 - Telephone interviews
 - Some combination of the above methods
- (BP7) Document strengths, weaknesses, and risks of each proposal to support the cost/past performance tradeoff.
 - Recognize that numerical rating systems can imply false precision and limit flexibility in the decision making process
- (BP8) Justify price premiums with tradeoff documentation regardless of the selected proposal's cost or past performance superiority.
 - The greater the price premium, the greater the documentation must show the worth
- (BP9) Ensure that the source selection decision is consistent with the relative weights assigned to the evaluation factors in the solicitation.
- (BP10) Conduct a proper and timely debriefing.
 - Debriefings provide unsuccessful offerors with the opportunity to learn about their strengths and weaknesses and how to improve future proposals submitted to the Government
 - Offerors rely heavily on information provided during debriefing sessions to influence their decisions regarding filing protests

- (BP11) Assess current contract performance; it is a basic “best practice” for good contract administration, and it is one of the most important tools available for ensuring good contractor performance.

By adhering to this comprehensive listing of best practices, acquisition professionals should be able to more effectively implement the use of PPI into their acquisition processes. One positive side-effect of increasing the effectiveness of the use of PPI is that Federal acquisition professionals will present a more level playing field to businesses that provide products and services to the Federal Government. This should in turn mitigate the risk of successful (sustained) protests brought about by unsuccessful offerors.

C. THE SENSE OF INDUSTRY

The purpose of this section is to gain an appreciation for how industry is reacting to the increased use of past performance information by Government procurement officials. This section will focus on pricing risk. For the purposes of this study pricing risk will be defined as how companies may potentially modify their pricing strategies dependent upon the weights assigned to past performance and cost or price (e.g., will the companies accept more risk by lowering profits to win a contract?).

1. Hypothesis

The researcher’s hypothesis is that companies will modify their pricing strategies when past performance is rated significantly higher than cost or price, and that past performance will have no effect on pricing strategies when past performance is rated significantly less than cost or price.

The hypothesis is based upon the following assumptions:

- Higher priced proposals will result when past performance is heavily weighted in the solicitation, and a company believes that its past performance will be rated above its competition
- Lower priced proposals will result when past performance is heavily weighted in the solicitation, and a company believes that its past performance will be rated below its competition
- Pricing strategies will be unaffected when past performance is weighted significantly less than cost or price

Initially, ten companies were contacted to test the validity of the hypothesis.

Ultimately, contracting officials from five of these companies agreed to participate in the survey, and they were able to respond to a set of research questions. The following question was developed and sent to the five companies: (The question is also reproduced as Appendix "B").

How might the following scenarios affect your pricing strategy?

- a. You Have Received a Request for Proposal (RFP) that Indicates that Past Performance will be Weighted Significantly more than Cost or Price (Past Performance 50%, Cost or Price 20%, and Technical 30%)

(1) In the first case, you are confident that your past performance rating will be higher than your competitors.

(2) In the second case, you feel that your past performance rating will be somewhat less than your competitors.

- b. You Have Received an RFP that Indicates that Past Performance will be Weighted Significantly less than Cost or Price (Cost or Price 70%, Past Performance 10%, and Technical 20%).

(1) In the first case, you are confident that your past performance rating will be higher than your competitors.

(2) In the second case, you feel that your past performance rating will be somewhat less than your competitors.

2. Analysis of Responses to the Research Questions

a. When Past Performance is Rated Significantly More than Cost or Price

This area generated the strongest responses and the most feedback from the respondents. When asked about the effects of past performance on pricing strategies when the offeror was confident that their performance rating would be higher than their competitors, three industry officials responded that past performance would have little or no effect on their pricing strategies. Some of their responses were:

- We would want to shoot for a competitive price [Ref. 41]
- The only area that would justify a higher cost or price is in the area of technical performance [Ref. 40]
- The percentage weight that the source selection committee would assign to past performance whether it's 50% or 10% has no impact on our pricing strategy. The question is really what is best for our business...we generally wouldn't change our pricing strategies.... We wouldn't artificially raise our costs.... We have a standard proposal process and a forward pricing rate agreement (FPRA). [Ref. 42]

The other two respondents indicated that their pricing strategies might actually be to lower the contract price for the following reasons:

- If past performance was weighted heavily and we were confident that our rating would be higher... we would accept less risk in our pricing...but we would not bid a price that we would lose money on [Ref. 43]
- Since you wish to have an ongoing relationship with your customer you will not gouge him because you think that you have an edge in past performance [Ref. 43]
- The pricing strategy would have to take into account an assessment of all the factors...in arriving at a "price to win" [Ref. 39]

The common thread winding through all of these responses is that when past performance is weighted heavily, a Government contracting officer may not see inflated prices from those companies that are potentially the leaders in past performance. On the contrary, the contracting officer may actually see deflated prices.

A suspicion of the motives for the use of PPI by Government procurement officials or a misunderstanding of the evaluation process by offerors are two of the major reasons why prices may be kept at or below the industry average. While the source selection criteria are spelled out in the request for proposals (RFP), several of the respondents indicated that:

- To us cost or price is always important (if for no other reason than the impact it has on the customer's mentality) [Ref. 40]
- You can't be sure how the evaluators will apply the criteria [Ref. 43]
- Given the methods for accumulating PPI and the subjective nature of the selection process no procurement is absolute [Ref. 39]

These responses are echoed in a 1997 survey conducted by the Society of American Military Engineers (SAME). The survey was designed to evaluate the fairness of the DoD performance evaluation system. Below are two of the findings that were reported by Neil B. Clipsham "Appraising Performance Appraisal Systems" The Military Engineer, (April-May 1998): 31.

- 75% of Contractors, Consultants, and Suppliers believe the Federal Acquisition Regulation (FAR) and directives allow too much latitude to evaluators, resulting in widely differing weighting and selection of evaluation factors...
- 50% responded that changes are needed to ensure a stable standard for measuring performance [Ref. 9]

When responding to the question that dealt with the situation: when past performance is rated highly and your past performance rating may be somewhat less than

your competitors, there appears to be multiple approaches. The first approach indicates that there is a strong possibility some companies would look at lowering their profit/fee or price in an attempt to win the contract award. Two of the reasons that were given for this approach are:

- We may make a business decision to lower our fee and accept a cost challenge because obtaining the work is critical to our business goals [Ref. 42]
- If we felt strongly about the contract, we may sharpen our pencil on price or reduce our fee or profit [Ref. 41]

This approach seems to reflect the actions of companies that are hungry for work. If the companies are in critical need of the work, then lowering the profit/fee or price may be the only way that the companies can competitively bid for the contracts.

However, the approaches that two of the other companies proposed seem to be more effective from the standpoint of good business sense. The representative from Lockheed Martin stated that he would attempt to draw attention to "relevant" past performance to mitigate the effects of any negative past performance. Under his approach, he would use the "best value" for his company's technical approach as the benchmark for his pricing strategy. [Ref. 39]

The representative from Northrop-Grumman takes the approach that "nothing can offset bad past performance, not even lowering cost or price." He proposed that to be able to competitively bid for contracts, his company would place "emphasis on the good for obvious reasons and emphasis on the bad to prove that they were aware of the problem and that they had a plan in place to fix it." To put teeth into the corrective action plan, he indicated that his company would also develop a "negative incentives

program” that would be tied to the corrective action plan. From the researcher’s viewpoint, of the three approaches proposed by the respondents, this approach represents the best win/win scenario. The company is internally motivated by the self-imposed negative incentives plan to take corrective action, thereby reducing the overall contract risk to the Government.

b. When Past Performance is Rated Significantly Less than Cost or Price

Here the respondents answered overwhelming that their companies would not modify their pricing strategies. Nearly every respondent indicted that their company would base its pricing strategy on cost or price factors. It did not matter if they believed that their company’s past performance was rated higher or lower than their competitors.

From a business standpoint these responses are clearly understandable. The awarding of contracts under these terms will be contingent upon cost or price issues. Due to the weights assigned, the effects of prior past performance are almost negligible, and it seems appropriate that the companies would develop their pricing strategies to revolve around cost or price factors.

3. Survey Conclusions

The bulk of the research presented here supports the hypothesis. It appears that companies will modify their pricing strategies and accept more risk when past performance is rated significantly higher than cost or price, and that past performance will have little or no effect on pricing strategies when past performance is rated significantly less than cost or price.

It's interesting to note that at least one of the assumptions that the hypothesis was based upon needs to be modified. While the researcher expected to see that pricing would be higher in those cases when companies believed that they held the edge in past performance, the research indicates that these companies may actually employ a pricing strategy that results in prices that are below their competitors.

The research highlights an interesting paradox. The Federal acquisition workforce has adopted the use of past performance in source selections because business leaders have convinced policy makers that the use of past performance information is one of their "best practices." But while corporate America uses past performance in their dealings with suppliers, these same companies are suspicious when Federal acquisition professionals use this same best practice.

Because companies are unsure of how their past performance will be rated against their competitors, there are numerous pricing strategies. The implications of this paradox are displayed in the following example. A contracting officer receives three responses to a request for proposal (RFP) that stated that the contract would be awarded without discussions, and that past performance would be weighted significantly higher than cost or price. The independent Government cost estimate for the contract is \$1,500,000.

A	B	C
\$1,500,000	\$1,350,00	\$1,250,000

Initially Company "C" would appear to be the best choice (lowest price), but through detailed analysis of the proposals, and diligent verification of the résumés submitted for the determination of past performance, the contracting officer would find that Company "A" has average past performance and a standard pricing strategy (a

forward pricing rate agreement). Company "C" has average past performance, and its pricing is based upon a critical need for the work. Lastly, Company "B" has above average past performance, and in order to win the contract award its pricing is based upon a cost challenge. Clearly Company "B's" proposal would pose the least amount of risk to the Government and its past performance/price tradeoff would be the most compelling (the best value).

If this example were to have taken place in a highly competitive market, the use of best practices would be critical in presenting a level playing field to the offerors. The solicitation would have to communicate effectively to each offeror. The determination of relevant PPI to be considered and the verification of that PPI would be critical to identifying trends. PPI evaluators would need to be trained in the evaluation of past performance. The documentation of the tradeoff between past performance and price would be critical in debriefing the unsuccessful offerors as to why a price premium was either paid or not paid. To forestall protests to the Comptroller General, each debriefing would have to provide each offeror with the sense that its proposal was evaluated in a fair and reasonable manner.

D. SUMMARY

In this chapter the researcher reviewed five best practices guides, he identified eleven key best practices associated with past performance information, and he reported on a survey of industry. The next chapter will look at how the Comptroller General has dealt with recent past performance protests.

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IV. PAST PERFORMANCE PROTESTS

A. INTRODUCTION

This chapter begins with an overview of the GAO Comptroller General protest process. It then reports on an analysis of all protests from the last four fiscal years to identify overall trends. PPI protests are then compared to the overall population of protests to determine if the percentage of PPI protests are increasing or decreasing. Following the analysis of the general trends, the sustained PPI protests are analyzed to determine what specific trends have developed. After the general and specific trend analysis, all one hundred fifty-one PPI protests are categorized, and fourteen sustained and denied protests are reviewed to highlight the case principles that the Comptroller General applies when issues of past performance are involved.

B. THE PROTEST PROCESS

The following is the researcher's interpretation of the General Accounting Office, Administrative Practice and Procedure, Bid Protest Regulations, Government Contracts, 4 CFR Part 21, effective date August 8, 1996. [Ref. 17]

The bid protest process begins with an interested party filing a written protest with the General Accounting Office no later than 10 days after the basis for the protest is known or should have been known, with the exception of protests challenging a procurement conducted on the basis of competitive proposals under which a debriefing is requested, and when requested, is required. In such cases, the initial protest shall not be

filed before the debriefing date offered to the protester, but shall be filed not later than 10 days after the date on which the debriefing is held.

Unless the protest is dismissed due to procedural or substantive defects (if the protest passes this step it is referred to as a merit protest), the contracting agency must submit an agency report to the GAO responding to the protest, and a copy of that report must be provided to the protester. The contracting agency may also be required to withhold award and to suspend contract performance for up to 90 days (90-day stay), to allow the Comptroller General's office to complete its inquiry into the protest allegations. The Competition in Contracting Act of 1984 authorizes contracting agencies to override the stay if the performance of the contract is in the best interest of the Government or if there are justifiably "urgent and compelling circumstances."

During the protest process, the Comptroller General may schedule informal meetings or conferences to resolve procedural matters and to obtain information pertaining to the disposition of the protest. A hearing may also be conducted to resolve factual and legal issues raised during the protest process. Prior to the hearing a pre-hearing conference will be conducted to:

- Decide what issues are to be considered during the hearing
- Identify witnesses who will testify
- Settle any outstanding procedural issues

Within 100 days after the hearing, the Comptroller General will issue a decision. Protests may be denied or sustained. In the case of sustained protests, if the Comptroller General determines that a source selection was not conducted in accordance with current

statute or regulation, he shall recommend that the contracting agency implement any combination of the following remedies:

- Terminate the contract
- Recompete the contract
- Issue a new solicitation
- Award the contract consistent with statute or regulation
- Pay the protestor's costs of filing and pursuing the protest, to include attorneys' fees, consultant and expert witness fees, and bid and proposal preparation costs

Unless the decision contains protected information, a copy will be provided to the protestor, the head of the contracting activity involved, the senior procurement executive of the Federal agency involved, and a copy shall be made available to the public.

C. TREND ANALYSIS

During the collection phase of information to analyze for trends, Mr. Jerold Cohen, Special Assistant to the General Counsel (GAO), informed the researcher that while the GAO did keep overall statistics, the agency did not keep statistics on past performance protests. [Ref. 35] Mr. Cohen advised the researcher to read through the Comptroller General's decisions available through the GAO's database, review John Cibinic and Ralph Nash's Formation of Government Contracts, 3rd ed. [Ref. 8] and to contact personnel such as Mr. Bob Antonio, Webmaster for "Where in Federal Contracting". [Ref. 50] Table 3.1 was developed by the researcher from information obtained from the Comptroller General's Office, Mr. Antonio, and a comprehensive review of the protests involving past performance.

GAO's Bid Protest Statistics				
	Fiscal Years			
	1997	1998	1999	2000 (Oct-Jun)
Merit Protests (Sustained & Denied)	501	406	347	161
Protests Sustained	61	63	74	44
Sustainment Rate (%)	12%	16%	21%	27%
Past Performance Statistics				
	Fiscal Years			
	1997	1998	1999	2000 (Oct-Jun)
Past Performance Protests (Sustained & Denied)	40	43	62	46
Protests Sustained	6	13	15	13
Sustainment Rate (%)	15%	30%	24%	28%
Comparison Of GAO Statistics & Past Performance Statistics				
	Fiscal Years			
	1997	1998	1999	2000 (Oct-Jun)
Past Performance Protests as a Percentage of Merit Protests	8%	11%	18%	29%
Past Performance Protests as a Percentage of Sustained Protests	10%	21%	20%	30%

Table 4.1. Past Performance Protests.

Analysis of the data shows a number of trends that have developed since the introduction of the requirement to utilize past performance information in the Federal acquisition process. The first major trend is that while the number of merit protests has been declining over the last four years, the number of past performance related protests has been increasing. In 1997, past performance protests constituted only 8% of all merit protests, and as of June 2000 that percentage has grown to 29%. This upward trend has

also taken place with the percentage of past performance protests as a percentage of sustained protest. In 1997, sustained past performance protests accounted for only 10% of the overall sustained protests, and by June of 2000 that percentage has risen to 30%.

Both of these trends are consistent with the research presented earlier in this thesis, that offerors are suspicious and uncomfortable with the use of PPI by Federal acquisition professionals. It is understandable that as the dollar thresholds for the collection and use of PPI have decreased from \$1,000,000 in 1997, to \$100,000 in January 1999, businesses would respond to the increased use of PPI in source selections by questioning its use.

In Chapter II, it was pointed out that the Federal acquisition workforce has had some difficulty implementing various acquisition reform initiatives that had been levied upon them in the last five years. The struggle to incorporate the collection and evaluation of PPI into the day-to-day operations of Federal procurement agencies is reflected in the increasing number of sustained past performance related protests.

During an interview, Mr. Stan Soloway, the Deputy Under Secretary of Defense (Acquisition Reform) told the researcher that he was not surprised that the number of past performance related protests had increased and that the number of sustained past performance protests had also increased. He explained that DoD officials should have seen these trends coming because:

Businesses want to be treated fairly. They want a level playing field, and they can't be guaranteed one with our current collection and tracking systems. With the increased emphasis on the collection and use of past performance information, it is understandable that businesses would challenge more of our evaluations and best value determinations.

He went on to further explain that:

At one time there was talk of a DoD-wide Contractor Performance and Assessment Reporting System (CPARS). Recent developments have changed that goal, and now each Service is going to be responsible for its own system. In the absence of a good collection and tracking system for past performance, there is always the possibility of mistakes in the collection and evaluation of past performance. These mistakes translate into more past performance protests that have substance.

Mr. Soloway concluded the discussion by stating that:

Because of the benefits associated with the use of past performance information in source selections, we would never want to go back to the old ways of looking at cost or price only, [Low price technically acceptable (LPTA)].

Improving our processes for the collection and use of past performance information throughout the Federal acquisition process is one of the keys for ensuring that businesses that deal with us feel that they are being treated fairly. Their continued interest in doing business with the Federal Government is essential to continued competition in Federal contracting. [Ref. 18]

D. SUSTAINED PROTEST BREAKOUT

Figure 4.1 was developed from an analysis of the forty-one sustained past performance protests from Fiscal Year 1998 through the first three quarters of Fiscal Year 2000. It highlights the fact that in the majority of the sustained protests, Federal acquisition professionals failed to consistently apply their own evaluation criteria. In thirty-three of the sustained protests, the evaluation of past performance information was found not to be consistent with the evaluation criteria contained in the request for proposals (RFP), or the source selection was found to be arbitrary and capricious with little or no regard for PPI. It is evident that in these protests, Government acquisition

professionals failed to adhere to the current regulatory requirements and the published best practices.

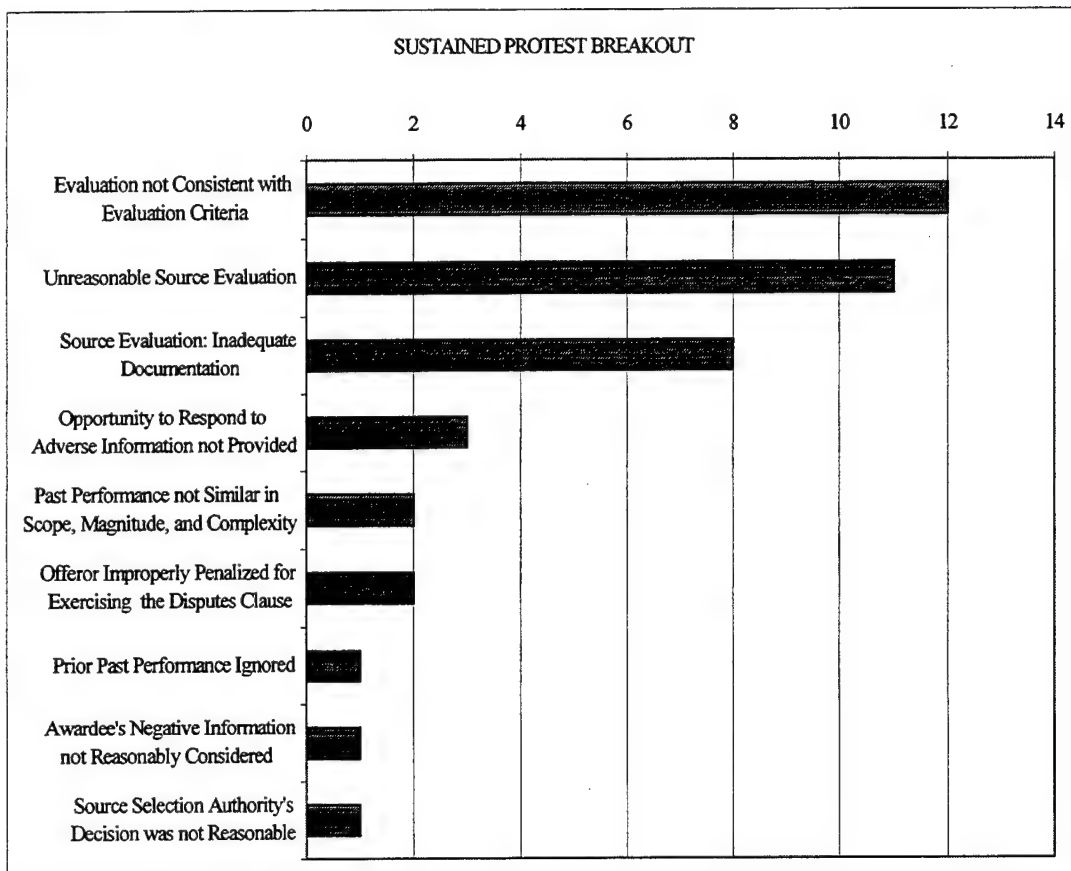


Figure 4.1. Analysis of Sustained Past Performance Protests.

While there are lessons to be learned from the sustained protests, there are more lessons to be learned from the complete population of past performance related protests. Because the Comptroller General will only rule on a protest after it has been determined that the protest has merit, it follows that there are lessons to be learned from both sustained and denied protests. The population of one hundred fifty-one past performance related protests from Fiscal Year 1998 through June 2000 (Appendix C) can be categorized into seven general categories:

- Evaluation Plans
- Evaluation Criteria or Factors
- Past Performance
- Best Value Evaluations
- Evaluation of Offers
- Bias of Government Officials
- Proposal Evaluation--Documentation

The categories facilitate the identification of the key case principles that can be identified from both the sustained and the denied past performance protests. Knowledge of and an understanding of these case principles will enable Federal acquisition professionals to more effectively utilize past performance information in source selections.

E. CASE PRINCIPLES

In identifying the case principles that apply to each category, representative protests will be used to illustrate the principles. Each protest case will be identified, the protestor's position will be briefly reviewed, the process the Comptroller General (Comp. Gen.) used to review the case will be briefly noted, and then each protest ruling will be tied to the key case principle that the Comp. Gen. relied upon in either sustaining or denying the protest. For later reference, a listing of the principles derived from these cases is presented in Appendix D.

1. Evaluation Plans

a. *Matter of: General Security Services Corporation, B-280388; B-280388.2, September 25, 1998*

In this case, General Security Services Corporation (protestor) argued that there was a lack of documentation in the evaluation record that justified scoring changes related to its proposal under the assessment of the past performance sub-factor. In particular, the record failed to include separate evaluation forms to explain the changed scoring, as required by internal agency instructions, entitled "Instructions for Technical Evaluation Factors." In support of its position, the protestor cites one evaluator's scoring sheet, which showed "what appeared to be a scoring change from four points to zero points on the past performance sub-factor which was worth 5 points."

After reviewing the records the Comp. Gen. denied the protest. The denial was based on the principle that:

CGP 1a. Alleged deficiencies in the application of an agency's evaluation plan does not provide a basis for questioning the validity of the award selection; these plans are internal agency instructions and as such do not give outside parties any rights. Consequently, the fact that an agency may not have followed its internal evaluation instructions is not a valid basis for protest. (Ref. 24)

b. *Matter of: Enmax Corporation, B-281965, May 12, 1999*

In this case Enmax Corporation (protestor) argued that the Air Force's (agency) evaluation of the awardee's proposal was improper in two areas--the conclusion that the awardee's proposal was technically acceptable, and the decision that the awardee's proposal presented low performance risk. In considering a protest challenging an agency's evaluation of proposals, the Comp. Gen. will examine the record to determine whether the agency's judgment was reasonable and consistent with stated

evaluation criteria and applicable statutes and regulations. In this case, the Comp. Gen. found that the agency's evaluators had failed to evaluate the awardee's proposal in accordance with the evaluation criteria contained in the solicitation. The protest was sustained, and the sustainment was based on the principle that:

CGP 1b. As a preliminary matter, it is the solicitation, not the internal evaluation plan that is the touchstone for whether offerors have been treated fairly in an evaluation. Requirements stated in evaluation and source selection plans are not disclosed to offerors, and thus, do not give outside parties any rights. [Ref. 23]

2. Evaluation Criteria/Factors

a. Matter of: Borders Consulting, Inc., B-281606, March 10, 1999

In this case the protestor's (Borders Consulting, Inc.) principal argument was that the solicitation's evaluation criteria were improper and that certain of the agency's technical evaluators should have been excluded from participation in the acquisition. The protestor took specific issue with two criteria--experience and knowledge of secure electronic commerce development, and experience and knowledge of web-based security--asserting that they do not reflect the statement of work. The protestor also asserted more generally that the evaluation criteria were designed to favor the incumbent contractor. After reviewing the records, the Comp. Gen. ruled that the protest that the evaluation criteria were designed to "steer" the award to a particular firm was denied where the criteria directly related to statement of work. The denial was based on the principle that:

CGP 2. Agencies enjoy broad discretion in selecting evaluation criteria and the Comptroller General will not object to a solicitation's evaluation scheme so long as it reasonably relates to the agency's needs. The fact that a solicitation's requirements or evaluation criteria may favor the agency's

actual needs, and the advantage enjoyed by a particular firm is not the result of improper Government action. [Ref. 20]

3. Past Performance

a. *Matter of: OMV Medical, Inc.; Saratoga Medical Center, Inc., B-281606, February 3, 1999*

In this case both protesters (OMV Medical, Inc. and Saratoga Medical Center, Inc.) principally assert that the agency failed to adhere to the RFP's announced evaluation standard, relaxed the RFP's adequate compensation requirements, failed to meaningfully evaluate price realism and misled them into failing to reduce their proposed professional compensation. The protesters also contended that the Air Force (agency) engaged in prejudicially unequal discussions with certain offerors.

The protestors also contended that the agency arbitrarily neutralized past performance as an evaluation discriminator by according all offerors "low risk" performance ratings regardless of experience, which was allegedly prejudicial to the incumbent. The Comp. Gen. found that here, the main purpose of the past performance evaluation was for the agency to identify and review relevant present and past performance in order to make an overall risk assessment of the offeror's ability to perform the requirement. In order to do so, the agency sent questionnaires to a minimum of two references provided by each offeror. Based on the responses received, the agency concluded that all offerors were capable of performing and, thus, all received a low performance risk rating. Although the protestor challenged the relevance of the references submitted by some offerors, the Comp. Gen. found nothing unreasonable in the agency's approach to investigating the past performance history of the offerors and, based on that

investigation, in concluding that all offerors presented a low risk of nonperformance.

Therefore, the protest was denied and the denial was based upon the principle that:

CGP 3a. Where a solicitation requires the evaluation of offerors' past performance, an agency has the discretion to determine the scope of the offerors' performance histories to be considered provided all proposals are evaluated on the same basis and consistent with the solicitation requirements. [Ref. 31]

b. Matter of: D.F. Fire Fighter Catering, B-280767.4, September 10, 1999

In this case, the D. F. Fire Fighter Catering (protestor) argued that the U.S. Forest Service (agency) failed to comply with FAR 42.1503 (b) and (e) in its evaluation of the protestor's past performance. Specifically, the protestor argued that the agency did not review certain disagreements regarding the protestor's past performance at a level above the contracting officer, as required by FAR 42.1503 (b), and that the agency was precluded by FAR 42.1503 (e) from considering adverse PPI from a prior contract because that information was more than three years old.

After reviewing the records of the case, the Comp. Gen. found that contrary to the protestor's assertions, both the protestor's PPI and the contracting officer's comments concerning the protestor's PPI were reviewed by the Head of the Contracting Activity and the Office of General Counsel. The Comp. Gen. also ruled that the agency complied with FAR 42.1503(e), which provides that "past performance information shall not be retained to provide source selection information for longer than 3 years after completion of contract performance," even though it considered all of the protester's 5-year past performance history under the predecessor contract, because the

past performance evaluation took place within 3 years of completion of that contract's performance. The protest was denied, and the denial was based upon the principle that:

CGP 3b. A contractor's past performance may be considered for up to three years after the completion of contract performance as a whole, rather than for only three years after each incident of performance under the contract. [Ref. 22]

c. Matter of: Kellie W. Tipton Construction Company, B-281331.3, March 22, 1999

In this case, the Kellie W. Tipton Construction Company (protestor) protested the termination for convenience of its contract for the installation and replacement of water and sewer lines at Fort Campbell, Kentucky and the Army's (agency) decision to award a contract for these services to another offeror.

The Comp. Gen. ruled that the allegation that the agency misevaluated proposals with respect to past performance was denied where the record showed that the agency evaluation was reasonable and did not conflict with the solicitation evaluation criteria. While the solicitation called for offerors to submit at least ten references, and the awardee did so, the solicitation did not state that all ten references would be evaluated, and the agency's decision to evaluate only five references for all offerors did not prejudice the protester and was otherwise unobjectionable.

The agency reported that while it requested and would have preferred to obtain completed questionnaires from ten of the contractor's job references, not all offerors submitted ten references and the agency determined that five past performance records were sufficient to evaluate an offeror. In evaluating the protestor's past performance the agency reviewed three government projects ratings and two customer performance surveys and concluded that there was a high probability that the protestor

would perform well. Likewise, the agency reviewed three government projects and two customer performance surveys in its review of the awardee's past performance. The protestor and the awardee were rated as being equal under past performance.

Notwithstanding the protestor's assertions to the contrary, the Comp. Gen. found nothing unreasonable in the agency's manner of assessing the awardee's and the protestor's past performance. While the RFP requested a minimum of ten references, it did not specify the number of references that the agency would contact for purposes of evaluation. The protest was denied and the ruling was based upon the principle that:

CGP 3c. There is no requirement that an agency contact all of an offeror's references. [Ref. 27]

d. Matter of: Consolidated Engineering Services Inc., B-279565.2; B-279565.3, June 26, 1998

Consolidated Engineering Services, Inc. (protestor) protested the Department of Housing & Urban Development's (agency) award of a contract to Halifax Technical Services (awardee) for commercial facilities management services with respect to the HUD headquarters building in Washington, D.C. CESI challenged the evaluation results.

The protestor argued that the agency improperly downgraded its proposal relative to the awardee's based on the awardee's more detailed description of the proposed elevator maintenance subcontractor's experience; since the protestor and the awardee proposed using the same subcontractor, they should have received the same score for the subcontractor's experience.

The protestor also challenged the evaluation of the subfactor for proposed elevator maintenance organization, under the experience and qualifications factor ~~(The~~ awardee's proposal received 150 and the protestor's received 142 of the available 160 points under the factor). Although both offerors proposed the incumbent HUD elevator maintenance subcontractor, 3 of 15 available subfactor points were deducted from the protestor's score--while the awardee received all 15 points--for failure to adequately address the results achieved (e.g., quality of service, timeliness of performance and cost control), by the subcontractor under prior contracts. The protestor disputes the agency's position that the awardee's proposal was superior in addressing the results achieved by the subcontractor, and argues that, in any case, since the proposed subcontractor was the incumbent, the evaluators should have been aware of its performance and capabilities.

The Comp. Gen. ruled that even if the agency was correct that the protestor's proposal did not provide as much information as the awardee's regarding the subcontractor's experience, since both proposals offered the same subcontractor, the evaluation unreasonably accorded the two proposals different scores in this area. Once the agency became aware of the subcontractor's experience--whether from the awardee's proposal, personal knowledge, or otherwise--it could not have reasonably assigned the awardee's proposal a higher score than the protestor's based on that experience. Accordingly, it appears that the protestor's proposal was entitled to the same score as the awardee's under this subfactor, for an increase of 3 points. The protest was sustained, and the ruling was based upon the principle that:

CGP 3d. An agency may not ignore prior performance information of which it is aware. (Ref. 21)

4. Best Value Evaluations

a. Matter of: Marathon Watch Company Limited, B-281876; B-281876.2, April 22, 1999

Marathon Watch Company Limited (protestor) protested the issuance of a purchase order by the Defense Logistics Agency, Defense Supply Center Richmond (agency), to Stocker & Yale, Inc. (awardee). The protestor challenged the adequacy of the best value determination, which resulted in the agency's issuance of the purchase order to S&Y.

The Comp. Gen. found that the agency's selection of a higher-priced vendor with excellent performance history instead of a lower-priced vendor, whose performance reflected delivery delinquencies, was reasonable and consistent with the solicitation's evaluation scheme, which provided that if the vendor with the best past performance history did not offer the lowest price, the agency would make a tradeoff of price and past performance including such considerations as inventory status and historical delivery problems, where there was a low inventory of the solicited item and the higher-priced vendor's better performance record indicated a lower performance risk.

In reviewing the records, the Comp. Gen. found that the request for quotations (RFQ) advised that the best value determination would be based on a comparative assessment of prices and past performance, which were equally weighted. The past performance factor considered quality performance and delivery performance to be "of equal value." If the vendor with the best past performance history did not offer the lowest price, the agency would make the appropriate tradeoff of price for past

performance, and listed several considerations such as delivery schedule/inventory status and historical delivery/quality problems that could affect the tradeoff determination.

Based upon the review of the records, the protest was denied and the Comp. Gen based the decision upon the principle that:

CPG 4a. When making "Best Value Determinations", the Contracting Officer's decisions concerning tradeoffs between past performance and cost/price will be judged to be reasonable and consistent, provided that it can be shown that the tradeoffs are in the best interest of the government and that they are consistent with the solicitation's evaluation scheme. [Ref. 29]

b. Matter of: Beneco Enterprises, Inc., B-283154, October 13, 1999

Here Beneco Enterprises, Inc. (protestor) protested the awarding of three contracts to [Offeror A], Straub/Pacific LLC, and [Offeror B], by the U.S. Army Corps of Engineers (agency), for construction services at installations under the jurisdiction of the Corps's Los Angeles District and the Bureau of Prisons' Western Region. Beneco protested that the Corps misevaluated price and did not treat it as significantly less important than technical concerns in the price/technical tradeoff, as required by the RFP evaluation scheme.

The Comp. Gen. found that the contemporaneous records did not explain why the agency rejected the protestor's significantly superior proposal to save an evaluated \$534,433 represented by [Offeror B's] proposal--a proposal which earned less than two-thirds of the available evaluation points, garnered only "satisfactory" ratings under evaluation factors representing 850 evaluation points, and was the source of "grave concern" regarding its past performance/quality. The contemporaneous record simply reflected that the agency was unwilling to pay a 27-percent price premium to obtain a

proposal with a 36-percent higher technical score, without any discussion of the proposal's relative strengths and weaknesses. Furthermore, there was no indication in the contemporaneous record that the agency, in reaching this conclusion, accounted for the fact that technical factors were significantly more important than price factors under the stated evaluation scheme.

While the Comp. Gen. did agree that after evaluations, the selection authority might make price/technical tradeoffs; the extent to which one may be sacrificed for the other is governed by the test of rationality and consistency with the established evaluation factors. In this case the protest was sustained and the Comp. Gen. based the ruling in part upon the principle that:

CGP 4b. When price is secondary to non-cost/price factors, an agency may not select a lower-priced, lower-scored proposal, unless it determines that the premium involved in selecting a higher-rated, higher-priced proposal is not justified. However, when selection officials reasonably regard proposals as being essentially equal, price can become the determining factor in making an award notwithstanding that the evaluation criteria assigned price less importance than non-cost/price factors. [Ref. 19]

c. Matter of: Schaeffer Eye Center, B-284268, March 20, 2000

Schaeffer Eye Center (protestor) protested the award of a contract to Classic Optical Laboratories, Inc. (awardee) by the Department of Veterans Affairs (agency) for prescription eyeglasses for eligible veterans at VA medical centers in Alabama, Georgia, and South Carolina. The protestor contended that the award on the basis of the awardee's lower-priced, lower-rated technical proposal was not in accordance with the RFP's stated evaluation scheme, which provided that technical factors were more important than price.

The Comptroller General's review of the contemporaneous narrative evaluation findings for each of the offers under each of the evaluation factors did not provide any basis to question the agency's determination of technical equality. For instance, both offerors' proposals were credited for providing solid documentation of their proposed approaches, extensive experience, and personnel qualifications; the awardee's proposal, in fact, was rated technically outstanding in more evaluation areas than the protestor's proposal. The awardee's proposal was noted for exceeding certain important RFP requirements, surpassing the extent by which the protestor's proposal exceeded the same requirements.

In the Comp. Gen. judgment, when a selection official determines that proposals are technically equal, it means that overall there is no meaningful difference in what the proposals have to offer. It does not mean that the proposals are identical in every respect; one may be superior to the other in a variety of areas. In this case, the protestor did not argue with any specificity as to what aspects of its proposal render it overall technically superior to the awardee's proposal. Rather, the protestor relied only on the slightly higher technical score its proposal received to assert its claimed superiority, which, as discussed above, is alone insufficient to question the agency's technically equal determination.

Consequently the protest was denied, since the Comp. Gen. review of the records provided no support for the protester's claimed technical superiority. The Comp. Gen. found no basis to object to the reasonableness of the agency's determination that the proposals were essentially technically equal; and that the awardee's lower evaluated price

consequently served as a proper determinative factor for award. The ruling was based in part upon the principle that:

CGP 4c. In a negotiated procurement with a best value evaluation plan, point scores are useful as guides, but they do not mandate automatic selection of a particular proposal. Whether a given point spread between two competing proposals indicates a significant superiority of one proposal over another depends upon the facts and circumstances of each procurement and is primarily a matter within the discretion of the procuring agency. The question of whether a difference in point scores is significant is for determination on the basis of what that difference might mean in terms of contract performance and what it would cost the government to take advantage of it. [Ref. 32]

5. Evaluation of Offers

a. Matter of: LB&B Associates, B-281706, March 24, 1999

LB&B Associates, Inc. (protestor) protested the awarding of a contract to Four Seasons Environmental, Inc. (awardee) by the Department of Agriculture, Agricultural Research Service (agency), for operations and maintenance support services for the agency's South Atlantic Area facilities. The protester contended that the agency misevaluated its proposal and misled it during discussions.

The protester's argument that it should have received a higher past performance score than the awardee under a solicitation calling for work in a "hot" laboratory, i.e., a laboratory in which live viruses are present, since it has experience working in a "hot" laboratory, whereas awardee does not, is denied, where the records demonstrated that the awardee does in fact have experience working in a "hot" laboratory.

To the extent that the protester argued that its proposal deserved a higher score under the Demonstrated Success in Laboratory subfactor, the Comp. Gen. ruled that

it was not the role of its Office to make independent determinations regarding the merits of technical proposals. The protest was denied and the Comp. Gen based the decision on the principle that:

CGP 5. The evaluation of proposals is within the discretion of the procuring agency since it is responsible for defining its needs and the best method of accommodating them, and must bear the burden arising from a defective evaluation. The Comptroller General's function is to examine the agency evaluation to ensure that it was reasonable and consistent with the stated evaluation factors.

6. Bias of Government Officials

a. *Matter of: J.A. Jones Grupo de Servicio, SA, B-283234, October 25, 1999*

J.A. Jones Grupo de Servicio, SA, (protestor) protested the awarding of a contract to InterjetServe (awardee) by the Naval Regional Contracting Center in Naples, Italy (agency), for air terminal services at Rota, Spain. The protester asserted that the agency was biased in favor of the awardee, that the evaluation of proposals was unreasonable and inconsistent with the solicitation criteria, and that the selection of the awardee was unjustified.

The protester contended that the contracting officer, who performed the past performance evaluation, drafted and essentially controlled the written form of the evaluators' findings, and made the selection decision, which the contract review board approved, was biased in favor of the awardee. The protestor essentially contended that the "outstanding" ratings received by the awardee were irrational, considering the merits of the two proposals, and that there was no basis to pay a premium for the awardee's proposal.

The Comp. Gen. review of the records found that a message had been sent prior to the submission of initial offers, reminding the incumbent contractor to follow the solicitation's instructions for submitting information for evaluation, rather than rely upon the agency's familiarity with incumbent's capabilities. The Comp. Gen. saw nothing improper in the exchange, which occurred prior to submission of initial offers; rather, the advice provided by the contracting officer appeared to have been no more than a conscientious effort to enhance competition by ensuring that a significant competitor, the incumbent contractor, avoided a mistake often made by incumbents, which is failing to provide information needed for the evaluation, in the belief that the agency already has that information. In fact, the message in this case, refers to the contracting officer's past experience with such problems. The Comp. Gen. found no basis to object to the contracting officer's "gentle advice," apparently given for the purpose of enhancing competition.

The Comp. Gen. review of the written records found that the solicitation provided for an award based on best value, considering technical acceptability, evaluated on a pass/fail basis, price, and relative capability. Relative capability was to be determined by the agency on the basis of past performance and an understanding of Government requirements. The RFP stated that the agency would contact each offeror's customers for information on past performance, defined as "a measure of the degree to which an offeror satisfied its customers in the past." It directed offerors to "describe your company's past performance on directly related or similar Government or commercial contracts and subcontracts that are similar in scope, magnitude and complexity to that

required by the RFP," including current contracts and those completed within the prior five years.

The Comp. Gen. denied the protest in this case and the ruling was based upon the principle that:

CGP 6. Because government officials are presumed to act in good faith, we do not attribute unfair or prejudicial motives to them on the basis of inference or supposition. Where a protester alleges bias on the part of government officials, the protester must provide credible evidence clearly demonstrating a bias against the protester or for the awardee and showing that the agency's bias translated into action that unfairly affected the protester's competitive position. [Ref. 28]

7. Proposal Evaluation—Documentation

a. Matter of: J&J Maintenance, Inc., B-284708.2; B-284708.3, June 5, 2000

J&J Maintenance, Inc. (protestor) protested the Army's (agency) award of a contract to Day & Zimmermann Services (awardee). The protester contends that the decision to award to the awardee on the basis of its higher-priced proposal was flawed because the agency unreasonably downgraded the protester's proposal and evaluated proposals unequally, giving the awardee's proposal higher ratings in a number of areas even though the protestor's proposal contained similar or better features.

The Comp. Gen. review of the records found that minimal documentation had been kept due in part to the fact that oral presentations had been used to streamline the source selection process. While the Comp. Gen. agreed that oral presentations are an effective means of streamlining the source selection process and enhancing an agency's understanding of an offeror's approach, the Comp. Gen. voiced the opinion that the FAR requirements for documentation does not limit the flexibility afforded by oral

presentations. FAR Sections 15.102(e) and 15.308 do not require a particular method of establishing a record of what was said by offerors during oral presentations or place an excessive burden on contracting agencies in recording oral presentations. Whatever method is chosen, FAR Sections 15.102(e), 15-305(a) and 15-308 do establish an obligation to provide a reasonably adequate record of such presentations and the evaluation thereof. Such a record permits the courts and boards to perform a meaningful review of the agency's selection decision. In this case, the oral presentations constituted the offerors' entire technical proposals (the only written portions of proposals related to past performance). The record of the oral presentations and the evaluation is so sketchy, that the Comp. Gen. had no means to determine, based upon the record, the reasonableness of the agency's selection. Therefore, the protest of the source selection decision was sustained where the record did not establish the reasonableness of the evaluation or the cost/technical tradeoff underlying the source selection. The ruling was based upon the principle that:

CGP 7a. Agency evaluation judgments must be documented in sufficient detail to allow review of the merits of a protest, to show that they are not arbitrary, and to show that they are in accord with the evaluation criteria listed in the RFP. [Ref. 26]

b. Matter of: Support Services, Inc., B-282407; B-282407.2, July 8, 1999

Support Services, Inc. (protestor) protested the Naval Facilities Engineering Command's (agency) award of a contract to DGR Associates, Inc., (awardee) for maintenance and repair of 240 military family housing units at the Marine Corps Support Activity in Belton, Missouri. The protestor challenges the evaluation of past

performance/relevant experience and argues that the award was based on a defective price/past performance tradeoff.

During the review of the source selection records, the Comp. Gen. found that the written documentation provided by the agency lacked sufficient detail for the Comp. Gen to make a determination. Therefore, the Comp. Gen. had to request clarifying statements from the contracting officer. This move by the Comp. Gen. was based upon earlier protest rulings that stated that the Comp. Gen. would accord more weight to contemporaneous documents in determining whether an evaluation was reasonable, post-protest explanations that were found to be credible and consistent with the contemporaneous documentation would generally be considered in the review.

In this case, the contracting officer's post-protest explanations were found to be generally consistent with the contemporaneous evaluation record and were sufficient to support the conclusion that all three of the protester's submitted housing maintenance references were considered. It is undisputed by the protester that the contemporaneous evaluation record confirms the contracting officer's post-protest statement that she documented the Portsmouth Naval Shipyard reference ratings with notations on the respective reference questionnaire submitted by the protester. Furthermore, the contemporaneous evaluation records provided no indication that the protestor's quote was rejected for failure to provide at least three references (as were the other quotes that failed to include the required references). The records indicated that the firm's quote was considered with the other acceptable quotes in the best value determination. Consequently, while the Comp. Gen. agreed that the language in the contracting officer's source selection statement suggested that the Portsmouth contract

was not considered, since the record shows that the contracting officer was well aware of the Portsmouth reference when she made her source selection decision, the Comp. Gen. concluded that the protestor's quote was not rejected for failure to provide three references, and that the Portsmouth reference was factored into the decision, as the contracting officer declares in her statement in response to the protest.

Notwithstanding the lack of evidence in contemporaneous written evaluation records concerning the number of references considered, the record as a whole indicated that all relevant references furnished by the protester were considered. The agency reasonably evaluated the awardee's experience with larger housing maintenance contracts more favorably than the protester's, and the agency reasonably determined that the protester's experience performing interstate rest area maintenance work was not relevant, since the contract to be awarded was for housing maintenance and repair. The Comp. Gen. denied the protest against the evaluation of the protester's past performance/relevant experience, and this ruling was based in part upon the principle that:

CGP 7b. When contemporaneous documentation does not completely address the issues at hand, the Comptroller General will consider post-protest explanations from contracting officials that are credible and consistent with the documentation. [Ref. 33]

F. SUMMARY

This chapter has covered the basic steps in the protest process. It has provided an analysis of past performance protests from Fiscal Year 1997 through the first three quarters of Fiscal Year 2000 (Appendix C). It provided a breakdown of past performance protests from Fiscal Year 1998 through June of Fiscal Year 2000, and it concluded by

categorizing and reviewing these past performance protests in order to identify key case principles (Appendix D).

By recognizing that clear and unambiguous communication of the evaluation factors in the solicitation, consistency in the application and evaluation of these factors, and the documentation of the evaluations and the best value determinations related to these factors are at the heart of the lessons that can be learned from these Comp. Gen., Federal acquisition professionals can more effectively incorporate the use of PPI into their acquisition and contracting processes. The next chapter will tie these case principles and the best practices identified in Chapter III with a model of the Federal acquisition process to act as a tool in assisting Federal acquisition professionals to more effectively utilize PPI.

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V. AN INTEGRATED MODEL OF THE FEDERAL ACQUISITION PROCESS

A. INTRODUCTION

The goals of the Federal acquisition process are to satisfy the customer's requirements for goods and services in a timely and cost effective manner, while minimizing business and technical risk, accomplishing socioeconomic objectives, maximizing competition, and maintaining the integrity of the procurement process. [Ref. 15:p. 5-6] With these goals in mind, this chapter introduces the researcher's conceptual model of the Federal acquisition process (Appendix E).

To provide Federal acquisition professionals with a common frame of reference, the format for the model was adopted from the model of the Federal acquisition process developed by the Federal Acquisition Institute and presented in their guidebook The Federal Acquisition Process (March 1999). [Ref. 15] The content of the model has been modified to reflect the Federal acquisition process as it is currently taught at the Naval Postgraduate School. Information from the following courses was incorporated into the model for the identification of the phases and the tasks:

- MN 3303 Principles of Acquisition and Contracting
- MN 3304 Contract Pricing and Negotiations
- MN 3315 Acquisition Management and Contract Administration
- MN 3331 Principles of Systems Acquisition and Program Management

The model presents the Federal acquisition process as a three-phased process (Procurement Planning, Contract Formation, and Contract Administration) that flows

through twelve distinct steps. These twelve steps are in turn composed of eighty-six individual functions and tasks that can be tailored to meet the needs of each procurement. These functions and tasks identify both the acquisition and the contracting activities that must be completed for the successful acquisition of both goods and services.

In presenting the model, the researcher will only focus on those functions and tasks that either have an impact on the collection and use of PPI or are impacted by the collection and use of PPI. The narrative of the model will follow a set pattern. Each function or task will be identified, and a brief description of the purpose for the function or task will be provided. Then the guidance provided by the FAR for that function or task will be presented. Following the presentation of the FAR requirements, the best practices (BP) and/or the Comptroller General case principles (CGP) that may apply to the function or task being reviewed will be presented.

The researcher's intent for creating this model is that by integrating those functions or tasks related to the collection and use of PPI with the general and specific guidance provided by the mandatory documents, the best practices, and the Comp. Gen. principles identified in this thesis, Federal acquisition professionals will be able to more effectively incorporate the use of PPI into their acquisition and contracting processes to achieve the goals of the process. Lastly, this model embraces the spirit of the statement of guiding principles contained in FAR 1.102(d):

The role of each member of the acquisition team is to exercise personal initiative and sound business judgment in providing the best value product or service to meet the customer's needs. In exercising initiative, Government members of the acquisition team may assume if a specific strategy, practice, policy, or procedure is in the best interest of the Government and is not addressed in the FAR, nor prohibited by law,

Executive order or other regulation, then that strategy, practice, policy, or procedure is a permissible exercise of authority.

B. PROCUREMENT PLANNING

PROCUREMENT PLANNING			
Determination of Need	Requirement Definition	Acquisition Planning	
1. Forecasting Requirements	4. Requirement Documents (SOW/SOO)	Acquisition IPTs	Selection Factors
2. Purchase Requests	5. Use of Government Property & Supply Sources	8. Source Selection Authority	20. Cost/Price Related Factors
3. Funding	6. Services	9. Source Selection Advisory Council	21. Non-Cost/Price Evaluation Factors
	7. Procurement Request	10. Source Selection Evaluation Board	Terms and Conditions
		11. Risk Management	22. Determination & Finding (D&Fs)
		12. Method of Procurement	23. Justification & Approval (J&As)
		Extent of Competition	24. Contract Types-Pricing Arrangements
		13. Competition Requirements	25. Recurring Requirements
		14. Lease vs. Purchase	26. Letter Contracts-Unpriced Contracts
		15. Commerciality Determination	27. Contract Financing
		16. SBA Set-Asides	28. Need for Bonds
		17. 8(a) Procurements	29. Method of Payment
		18. Unsolicited Proposals	30. Development of Source Selection Plan (SSP)
		19. Market Research	

Table 5.1. Procurement Planning. After Ref. [15]

1. Acquisition Integrated Product Teams (Items 8, 9, & 10)

The purpose of an acquisition Integrated Product Team (IPT) is to effectively and efficiently carry out the processes necessary for the procurement of goods and services.

DoDD 5000.1.D.1.b directs that Program Managers (PMs) and other acquisition managers shall apply the concept of Integrated Product and Process Development (IPPD) throughout the acquisition process to the maximum extent practicable, and at the core of IPPD implementation are IPTs. DoDD 5000.1.D.3.c goes on to further state that Defense acquisition works best when all of the Department's components work together. Cooperation and empowerment are essential. The Department's acquisition community shall implement the concepts of IPPD and IPTs as extensively as possible.

Acquisition managers should refer to best practice number two (BP 2) when forming these IPTs. It encourages acquisition managers to invest in command or program resources needed for a competent and well-documented best value source selection, and it reminds them that they should:

- Include the source selection authority as an active participant
- Train all the evaluators in best practices

In today's acquisition environment these IPTs will in many cases be matrix organizations, and the team members will come from diverse backgrounds. Because of the rapid pace of acquisition reform, IPT members will bring varying levels of experience and education to their respective teams. It is critical that any deficiencies in the training of evaluators are identified up front and early. By identifying deficiencies early on in an acquisition process, the assigned contracting official can provide training and guidance on the use of the current best practices.

Acquisition managers also need to ensure that the program has the resources in place for a competent and well-documented best value source selection. Members of the various IPTs should be provided with the appropriate resources, so that they can be

actively involved in their areas of responsibility. Furthermore, because the final award determination is the responsibility of the Source Selection Authority (SSA), he or she should be an active participant in the process. FAR15.303(b) states that: The SSA shall -

- Establish an evaluation team, tailored for the particular acquisition, which includes appropriate contracting, legal, logistics, technical, and other expertise to ensure a comprehensive evaluation of offers.
- Approve the source selection strategy or acquisition plan, if applicable, before solicitation release.
- Ensure consistency among the solicitation requirements, notices to offerors, proposal preparation instructions, evaluation factors and subfactors, solicitation provisions or contract clauses, and data requirements.

When dealing with issues of past performance, the analysis of the PPI protests has made it clear that constancy in the collection and evaluation of past performance is one of the major areas that the Comp. Gen. will review when determining whether a source selection determination was either fair and reasonable or arbitrary and capricious.

It's clear from the guidance provided by DoD 5000.2, the FAR, BP 2, and the Comp. Gen. case principles that for acquisition IPTs to be successful in efficiently and effectively acquiring goods and services, they must be composed of acquisition professionals who are knowledgeable in their areas of expertise, empowered to make decisions, engaged in the acquisition process, and educated in the collection, evaluation, and use of PPI.

2. Non-Cost or Price Related Factors (Item 21)

The purpose for the use of evaluation factors is to represent the key areas of importance and emphasis to be considered in the source selection decision, and to provide

a means of comparison of benefits among competing proposals. [Ref.10:p.L-3]
Evaluation criteria should be tailored to meet the needs of each acquisition, and only those factors, which provide a means of discriminating between proposals, should be selected. The chosen factors should focus on the true discriminators between proposals, and with regards to PPI, FAR 15.304(c) states that:

- Except as set forth in paragraph (c)(3)(iii) of this section, past performance shall be evaluated in all source selections for negotiated competitive acquisitions issued on or after January 1, 1999, for acquisitions expected to exceed \$100,000. Agencies should develop phase-in schedules that meet or exceed this schedule.
- Past performance need not be evaluated if the contracting officer documents the reason past performance is not an appropriate evaluation factor for the acquisition (OFPP Policy Letter 92-5).

So unless it is documented otherwise, past performance is a mandatory factor in competitively negotiated procurements. Agencies are granted a great degree of flexibility in selecting PPI subfactors because the FAR does not specifically identify them. To aid in the selection of PPI subfactors, BP 1 recommends that agencies should consider using the following subfactors for the evaluation of past performance or relative experience:

- Quality of performance
- Cost performance
- Schedule performance
- Business relations

CGP 2 reaffirms that agencies enjoy broad discretion in selecting evaluation criteria, and that the Comp. Gen. will not object to a solicitation's evaluation scheme so long as it reasonably relates to the agency's needs. CGP 3a extends this ruling by stating that agencies have the discretion to determine the scope of the offerors' performance

histories to be considered, provided that all of the proposals are evaluated on the same basis and consistent with the solicitation requirements.

3. Development of the Source Selection Plan (Item 30)

The Source Selection Plan (SSP) is crucial to the entire source selection process.

It has the following purposes:

- It specifies the Government's approach for soliciting and evaluating proposals
- It describes the source selection organizational structure
- It designates the persons who will perform the evaluation
- After approval by the SSA, the SSP is the "charter" that the Source Selection Advisory Council (SSAC), the Source Selection Evaluation Board (SSEB), and the contracting officer will follow [Ref. 10:p. M-6]

The SSP normally consists of two parts. The first part describes the organization of the source selection team. Typically the source selection team consists of the SSA, the SSAC, and the SSEB. The SSEB is further subdivided into groups for the evaluation of cost and cost realism, technical approach, and past performance. The functional areas and the responsibilities of each of the teams is documented in detail. The second part of the SSP identifies the evaluation factors and the detailed procedures for the evaluation of the proposals. Previous editions of the FAR contained FAR 15.612, which provided the minimum required elements of the SSP. However, the July 2000 edition of the FAR no longer contains this section. The only guidance for the SSP is found in FAR 15.303(b), which directs that, the SSA:

- Establish an evaluation team, tailored for the particular acquisition, which includes appropriate contracting, legal, logistics, technical, and other expertise to ensure a comprehensive evaluation of offers.

- Approve the source selection strategy or acquisition plan, if applicable, before solicitation release.

This limited guidance provided by the current FAR allows the drafters of SSPs a great deal of latitude when developing evaluation plans. As long as the SSP meets any other Agency, Department, or local selection guidance, the drafters of SSPs can be innovative and creative when developing evaluation plans. These evaluation plans can be tailored to meet the needs of the individual procurements, and CGPs 1a & 1b reaffirm that these SSP evaluation plans are internal documents.

1a. Alleged deficiencies in the application of an agency's evaluation plan does not provide a basis for questioning the validity of the award selection; these plans are internal agency instructions and as such do not give outside parties any rights. Consequently, the fact that an agency may not have followed its internal evaluation instructions is not a valid basis for protest.

1b. As a preliminary matter, it is the solicitation, not the internal evaluation plan that is the touchstone for whether offerors have been treated fairly in an evaluation. Requirements stated in evaluation and source selection plans are not disclosed to offerors, and thus, do not give outside parties any rights.

The SSP is clearly meant to be an internal document and its purpose is to guide the various members of the source select teams. As an internal document the Comp. Gen. has ruled that a SSP does not give unsuccessful offers any legal rights to challenge deviations from the SSP.

C. CONTRACT FORMATION

1. Pre-Solicitation Exchanges with Industry (Items 31, 32, 33, & 34)

The purposes for conducting pre-solicitation exchanges are to improve understanding of Government requirements and industry capabilities, thereby allowing

potential offerors to judge whether or not they can satisfy the Government's requirements, and enhancing the Government's ability to obtain quality supplies and services at reasonable prices, and increase efficiency in proposal preparation, proposal evaluation, negotiation, and contract award.

FAR 15.201(c) encourages early exchanges with industry. It states that:

Agencies are encouraged to promote early exchanges of information about future acquisitions. An early exchange of information among industry and the program manager, contracting officer, and other participants in the acquisition process can identify and resolve concerns regarding the acquisition strategy, including proposed contract type, terms and conditions, and acquisition planning schedules; the feasibility of the requirement, including performance requirements, statements of work, and data requirements; the suitability of the proposal instructions and evaluation criteria, including the approach for assessing past performance information; the availability of reference documents; and any other industry concerns or questions.***

FAR 15.201(c) also provides a listing of recommended techniques for promoting early exchanges with industry:

- Industry or small business conferences;
- Public hearings;
- Market research, as described in part 10;
- One-on-one meetings with potential offerors (any that are substantially involved with potential contract terms and conditions should include the contracting officer; also see paragraph (f) of this section regarding restrictions on disclosure of information);
- Pre-solicitation notices;
- Draft RFPs;
- RFIs;

- Pre-solicitation or pre-proposal conferences; and
- Site visits.

CONTRACT FORMATION			
Solicitation	Evaluation - Sealed Bidding	Evaluation - Competitive Proposal	Contract Award
Pre-Solicitation	Bid Evaluation	Proposal Evaluation	Selection for Award
31. Publicizing Proposed Procurement	38. Processing Bids	43. Processing Proposals	53. Source Selection Authority's Final Award Determination
32. Draft Solicitation Preparation	39. Bid Acceptance Periods	44. Responsiveness & Responsibility Determinations	54. Responsibility Determination
33. Pre-Award Inquiries	40. Late Bids	45. Awarding without Discussions	55. Preparing Award
34. Pre-Solicitation Conferences	41. Bid Opening/ Bid Prices	46. DCAA/ DCMA information	56. Award and Notices
Solicitation of Offerors	42. Responsiveness & Responsibility Determinations	47. Source Selection Evaluation Board Findings *Past Performance *Cost *Technical	57. Mistakes in Offers
		48. Competitive Range Determination (Communications)	58. Conduct Debriefings
35. Final Solicitation Preparation		49. Fact Finding	59. Protests
36. Issuance of Solicitation		50. Negotiation Strategy	
37. Amending/ Canceling Solicitation		51. Conducting Negotiations (Discussions)	
		52. Source Selection Advisory Council's Comparative Evaluation	

Table 5.2. Contract Formation. After Ref. [15]

BP 3 echoes the recommendations of FAR 15.201. The best practice guides overwhelmingly recommended conducting pre-solicitation exchanges of information with industry to provide the procuring agency with the opportunity to explain to potential

offerors the proposed approach (es) for the evaluation of performance risk. The guides point out that pre-solicitation exchanges can help to ensure that potential offerors have a clear understanding of how past performance will be evaluated.

While pre-solicitation exchanges are encouraged, procurement integrity must be maintained throughout the exchanges. No single offeror should be granted a competitive advantage because of information received during the exchanges. The Comp. Gen. has ruled on two issues that could arise due to pre-solicitation exchanges: the modification of evaluation factors arising from pre-solicitation exchanges, and bias on the part of Government officials. CGP 2 states the Comp. Gen.'s position on evaluation criteria:

Agencies enjoy broad discretion in selecting evaluation criteria and the Comp. Gen. will not object to a solicitation's evaluation scheme so long as it reasonably relates to the agency's needs. The fact that a solicitation's requirements or evaluation criteria may favor the agency's actual needs, and the advantage enjoyed by a particular firm is not the result of improper government action.

CGP. 6 states reflects the high regard that the Comp. Gen. holds for the integrity of Federal acquisition professionals:

Because Government officials are presumed to act in good faith, we do not attribute unfair or prejudicial motives to them on the basis of inference or supposition. Where a protester alleges bias on the part of Government officials, the protester must provide credible evidence clearly demonstrating a bias against the protester or for the awardee and showing that the agency's bias translated into action that unfairly affected the protester's competitive position.

Pre-solicitation exchanges with industry are an effective tool, and as long as the exchanges are open and the same information is provided to all potential offerors, Government acquisition professionals should feel comfortable about conducting pre-solicitation exchanges.

2. Final Solicitation Preparation (Item 35)

Solicitations are used to communicate the Government's requirements to prospective offerors.

FAR 15.404 (d) & (e) contains the specific guidance on what factors and related information must be in the final solicitation released to offerors. These two passages direct that:

(d) All factors and significant subfactors that will affect contract award and their relative importance shall be stated clearly in the solicitation. The rating method need not be disclosed in the solicitation. The general approach for evaluating past performance information shall be described.

(e) The solicitation shall also state, at a minimum, whether all evaluation factors other than cost or price, when combined, are --

- (1) Significantly more important than cost or price;
- (2) Approximately equal to cost or price; or
- (3) Significantly less important than cost or price.

FAR 15.305.2 (ii) describes the mandatory contents of the solicitation as it relates to past performance. It states:

The solicitation shall describe the approach for evaluating past performance, including evaluating offerors with no relevant performance history, and shall provide offerors an opportunity to identify past or current contracts (including Federal, State, and local government and private) for efforts similar to the Government requirement. The solicitation shall also authorize offerors to provide information on problems encountered on the identified contracts and the offeror's corrective actions. The Government shall consider this information, as well as information obtained from any other sources, when evaluating the offeror past performance. The source selection authority shall determine the relevance of similar past performance information.

BP 4 encourages the drafters of solicitations to communicate effectively with potential offerors. The language and terms used should be straightforward and readily understood. New entrants to the markets should be encouraged to identify other related past performance information. By incorporating these two approaches into the solicitation, potential misunderstandings and possible protests can be avoided.

CGP 1b illustrates the importance that the Comp. Gen. places on solicitations:

As a preliminary matter, it is the solicitation, not the internal evaluation plan that is the touchstone for whether offerors have been treated fairly in an evaluation.

The Comp. Gen. reaffirmed the importance of the role of the solicitation with CGP 3a and CGP 4a, which state:

CGP 3a. Where a solicitation requires the evaluation of offerors' past performance, an agency has the discretion to determine the scope of the offerors' performance histories to be considered provided all proposals are evaluated on the same basis and consistent with the solicitation requirements.

CGP 4a. When making "Best Value Determinations", the Contracting Officer's decisions concerning tradeoffs between past performance and cost/price will be judged to be reasonable and consistent, provided that it can be shown that the tradeoffs are in the best interest of the government and that they are consistent with the solicitation's evaluation scheme.

While solicitations are used to communicate the Government's requirements to prospective offerors, the drafters of these documents must keep in mind that the requirements must be clearly written and easily understood. The drafters need to ensure that all the factors and subfactors that will be used to evaluate proposals are identified, and that the general approach for evaluating the identified factors is described. Lastly, Federal acquisition professionals need to understand that the Comp. Gen. views the

solicitation as the “touchstone” between prospective offerors and the Federal Government. The Comp. Gen. will hold Federal agencies accountable for deviations from either the evaluation factors presented in solicitations or deviations from the relative weights assigned to evaluations in the solicitations.

3. Awarding without Discussions (Clarifications) (Item 45)

Awarding without discussions is a streamlined method for conducting competitively negotiated acquisitions. When contracting officials utilize this method they expect to receive an offeror’s best proposal on the initial submission, thereby removing the requirement for negotiations. FAR 15.306(a) covers clarifications and awarding without discussions:

- Clarifications are limited exchanges, between the Government and offerors, that may occur when award without discussions is contemplated.
- If award will be made without conducting discussions, offerors may be given the opportunity to clarify certain aspects of proposals (e.g., the relevance of an offeror's past performance information and adverse past performance information to which the offeror has not previously had an opportunity to respond) or to resolve minor or clerical errors.
- Award may be made without discussions if the solicitation states that the Government intends to evaluate proposals and make award without discussions. If the solicitation contains such a notice and the Government determines it is necessary to conduct discussions, the rationale for doing so shall be documented in the contract file (see the provision at 52.215-1).

The best practices guides that dealt with this subject repeated the requirements of 15.306(a). The researcher did not review any cases that dealt specifically with protests on this subject, but CGP 7a could reasonably be applied to protests in this area. Just as an

agency's judgments must be documented in sufficient detail to allow review of the merits of a protest, so too must clarifications be documented. If a protestor argued that an agency conducted misleading exchanges concerning the protestor's past performance, then it is safe to assume that in reviewing the records the Comp. Gen. would be looking for sufficient detail in the records concerning the exchanges to either sustain or deny the protestor's claim.

4. Source Selection Evaluation Board Findings (Item 47) & Source Selection Advisory Council's Comparative Evaluation (Item 52)

Proposal evaluation is an ongoing process that begins with the receipt of the proposals and concludes with the evaluation of final proposal revisions. Its purpose is to assess the quality of each offer and to determine the capability of each offeror [Ref. 8:p. 820].

FAR 15.305 provides evaluators with the general requirements for proposal evaluation.

Proposal evaluation is an assessment of the proposal and the offeror's ability to perform the prospective contract successfully. An agency shall evaluate competitive proposals and then assess their relative qualities solely on the factors and subfactors specified in the solicitation. Evaluations may be conducted using any rating method or combination of methods, including color or adjectival ratings, numerical weights, and ordinal rankings. The relative strengths, deficiencies, significant weaknesses, and risks supporting proposal evaluation shall be documented in the contract file.

FAR 15.305 (a)(2) provides evaluators with specific guidance for conducting PPI evaluations.

- Past performance information is one indicator of an offeror's ability to perform the contract successfully. The currency and relevance of the information, source of the information, context of

the data, and general trends in contractor's performance shall be considered. This comparative assessment of past performance information is separate from the responsibility determination required under subpart 9.1.

- The evaluation should take into account past performance information regarding predecessor companies, key personnel who have relevant experience, or subcontractors that will perform major or critical aspects of the requirement when such information is relevant to the instant acquisition.
- In the case of an offeror without a record of relevant past performance or for whom information on past performance is not available, the offeror may not be evaluated favorably or unfavorably on past performance.
- The evaluation should include the past performance of offerors in complying with subcontracting plan goals for small disadvantaged business (SDB) concerns (see Subpart 19.7), monetary targets for SDB participation (see 19.1202), and notifications submitted under 19.1202-4(b)

Best practices 5, 6, & 7 add further clarification and guidance on the subject of conducting and documenting the evaluation of past performance.

BP 5 encourages evaluators to use the most relevant, recent past performance information available in making the source selection decision. It points out that PPI can come from a variety of sources:

- Other Federal Agencies and Government databases
- State and Local Governments
- Commercial contractors
- References provided by the offeror
- Quality certificates and awards

BP 6 recommends that evaluators conduct reference checks and look for patterns or trends. Whenever possible evaluators are encouraged to request two POCs for each reference, and they are further encouraged to use:

- Questionnaires
- Face to face interviews. Keep in mind that these provide more insight than other methods; they can expose problems with the contractor that can be discussed during negotiations.
- Telephone interviews
- Some combination of the above methods

BP 7 strongly recommends that all evaluators document strengths, weaknesses, risks, and the associated value of proposals to support the cost/past performance tradeoff, and that they recognize the fact that numerical rating systems can imply false precision and limit flexibility in the decision making process

In handling protests that may arise over the evaluation of PPI, the Comp. Gen. can be expected to apply CGP 3c, 3d, 5, 7a, & 7b when appropriate.

CGP 3a & 3b. (a) There is no requirement that an agency contact all of an offeror's references. (b) An agency may not ignore prior performance information of which it is aware.

CGP 5. The evaluation of proposals is within the discretion of the procuring agency since it is responsible for defining its needs and the best method of accommodating them, and must bear the burden arising from a defective evaluation. The Comptroller General's function is to examine the agency evaluation to ensure that it was reasonable and consistent with the stated evaluation factors.

CGP 7a & 7b. (a) Agency evaluation judgments must be documented in sufficient detail to allow review of the merits of a protest, to show that they are not arbitrary, and to show that they are in accord with the evaluation criteria listed in the RFP. (b) When contemporaneous documentation does not completely address the issues at hand, the Comptroller General will consider post-protest explanations from

contracting officials that are credible and consistent with the documentation.

The evaluation of an offeror's PPI is one of the most subjective areas in the Federal acquisition process. While the FAR provides guidance on the subject, the best practices guides provide additional information on the methods for the collection and documentation of PPI. The Comp. Gen. principles make it clear that consistency in the application of the evaluation factors contained in the solicitation, and the documentation of the evaluation process are critical in mitigating the possibility of sustained protests.

5. Competitive Ranges Determinations (Communications) (Item 48)

Competitive range determinations are conducted throughout the evaluation process. The purposes for establishing a competitive range during an acquisition are to narrow the range to only those most highly rated proposals, or to further reduce the range for the purposes of efficiency.

FAR 15.306(b) covers communications with offerors before establishment of the competitive range. Communications are exchanges, between the Government and offerors, after receipt of proposals, leading to establishment of the competitive range. If a competitive range is to be established, these communications --

- Shall be limited to the offerors described in paragraphs (b)(1)(i) and (b)(1)(ii) of this section and --
- Shall be held with offerors whose past performance information is the determining factor preventing them from being placed within the competitive range. Such communications shall address adverse past performance information to which an offeror has not had a prior opportunity to respond.

The researcher did not come across any best practices that provided more specific guidance than is already provided by FAR 15.306(b). However, the research indicates that the Comp. Gen. can be expected to invoke CGP 6, 7a&b, when dealing with PPI protests in this area. Specifically, the Comp. Gen. will be looking into the issue of bias on the part of Government officials and the issue of whether there is sufficient evidence in the record to support the exclusion of an offeror from the competitive range. CGP 6 states that:

Because government officials are presumed to act in good faith, we do not attribute unfair or prejudicial motives to them on the basis of inference or supposition. Where a protester alleges bias on the part of government officials, the protester must provide credible evidence clearly demonstrating a bias against the protester or for the awardee and showing that the agency's bias translated into action that unfairly affected the protester's competitive position.

CGP 7a & 7b also remind Government acquisition professionals that:

- a. Agency evaluation judgments must be documented in sufficient detail to allow review of the merits of a protest, to show that they are not arbitrary, and to show that they are in accord with the evaluation criteria listed in the RFP.
- b. When contemporaneous documentation does not completely address the issues at hand, the Comptroller General will consider post-protest explanations from contracting officials that are credible and consistent with the documentation.

In today's competitive environment, many companies may bid on Government contracts, and some of these companies may not have a reasonable chance of winning the award due to poor PPI. With the reduction in the Federal acquisition workforce, the establishment of a competitive range allows Government acquisition professionals to

maximize the use of their resources by focusing on only those most highly rated proposals.

6. Source Selection Authority's Final Award Determination (Item 53)

The purpose of the SSA's source selection final award determination is to select the offer or offers which represent the best value to the Government. In many cases, this will be achieved through a tradeoff process. The tradeoff decision by the SSA reflects the Government's willingness to accept a higher priced offer because the perceived benefits of the higher priced offer are in the best interest of the Government.

FAR 15.308 guides the actions of the SSA. It directs that:

The source selection authority's (SSA) decision shall be based on a comparative assessment of the proposals against all source selection criteria in the solicitation. While the SSA may use reports and analyses prepared by others, the source selection decision shall represent the SSA's independent judgment. The source selection decision shall be documented, and the documentation shall include the rationale for any business judgments and tradeoffs made or relied on by the SSA, including benefits associated with additional costs. Although the rationale for the selection decision must be documented, that documentation need not quantify the tradeoffs that led to the decision.

BP 8 & 9 apply to source selection decisions. They amplify the requirements from FAR 15.308. BP 8 recommends justifying price premiums with tradeoff documentation regardless of the selected proposal's cost or past performance superiority. It further provides a rule of thumb that should be considered:

- The greater the price premium, the greater the documentation must show the worth

BP 9 strongly recommends that the SSA ensures that the source selection decision is consistent with the relative weights assigned to the evaluation factors in the solicitation.

CGP 4 a, b, c, 6, and 7a&b need to be taken into consideration when the SSA makes the final award determination. CGP 4 a, b, c deal with best value determinations; they state that:

a. When making "Best Value Determinations", the Contracting Officer's decisions concerning tradeoffs between past performance and cost/price will be judged to be reasonable and consistent, provided that it can be shown that the tradeoffs are in the best interest of the government and that they are consistent with the solicitation's evaluation scheme.

b. When price is secondary to non-cost/price factors, an agency may not select a lower-priced, lower-scored proposal, unless it determines that the premium involved in selecting a higher-rated, higher-priced proposal is not justified. However, when selection officials reasonably regard proposals as being essentially equal, price can become the determining factor in making award notwithstanding that the evaluation criteria assigned price less importance than non-cost/price factors.

c. In a negotiated procurement with a best value evaluation plan, point scores are useful as guides, but they do not mandate automatic selection of a particular proposal. Whether a given point spread between two competing proposals indicates a significant superiority of one proposal over another depends upon the facts and circumstances of each procurement and is primarily a matter within the discretion of the procuring agency. The question of whether a difference in point scores is significant is for determination on the basis of what that difference might mean in terms of contract performance and what it would cost the government to take advantage of it.

CGP 6 deals with the issue bias on the part of Government officials, and it states that

Because Government officials are presumed to act in good faith, we do not attribute unfair or prejudicial motives to them on the basis of inference or supposition. Where a protester alleges bias on the part of government officials, the protester must provide credible evidence clearly demonstrating a bias against the protester or for the awardee and showing that the agency's bias translated into action that unfairly affected the protester's competitive position.

CGP 7a & 7b deal with the issues that may arise over the documentation of the final award determination. They highlight the fact that:

- a. Agency evaluation judgments must be documented in sufficient detail to allow review of the merits of a protest, to show that they are not arbitrary, and to show that they are in accord with the evaluation criteria listed in the RFP.
- b. When contemporaneous documentation does not completely address the issues at hand, the Comptroller General will consider post-protest explanations from contracting officials that are credible and consistent with the documentation.

The SSA's final award determination is one of the last tasks before a contract is awarded. In acquisitions involving best value determinations, the documentation of tradeoffs that led to the determination are critical. While the Comp. Gen. has stated that Government officials are presumed to act in good faith, the merits of a protest will in large part be determined by the content of the acquisition's documentation.

7. Debriefings (Item 58)

The purpose for debriefing unsuccessful offerors is to inform them of the reasons why their offers were unsuccessful, and to help them identify areas in their proposals where improvements could be made for future acquisitions.

Once a final award determination has been made, the time for being innovative and creative has passed. FAR 15.506 provides very explicit direction for the post award debriefing of Offerors. It covers such topics as: the time restrictions for when debriefs must take place, the methods contracting officers may use for conducting debriefs, the minimum requirements for what information may be debriefed, and detailed restrictions on what information may not be disclosed.

With regards to debriefs, BP 10 only adds sage advice on the reasons for conducting proper and timely debriefs:

- Debriefings provide unsuccessful offerors with the opportunity to learn about their strengths and weaknesses and how to improve future proposals submitted to the Government
- Offerors rely heavily on information provided during debriefing sessions to influence their decisions regarding filing protests

Debriefings are a necessary function in the acquisition process. Not every company that submits a proposal has experience dealing within the Federal acquisition process, and for some it is a learning experience. As the Comp. Gen. has pointed out, "The function of debriefing is not to justify or defend a selection decision, but to assist offerors in preparing future proposals." [Ref. 10:p. H-11]

8. Protests (Item 59)

The requirements for the current protest procedures have their roots in the Competition in Contracting Act of 1984 (CICA). CICA's bid protest procedures enable disappointed bidders to compel Federal acquisition professionals to explain their procurement decisions to the Comp. Gen.

As with protests, the time for innovation and creativity are over. The FAR requirements are very lock-stepped. FAR 33.104 provides very specific guidance that must be followed by Federal acquisition professionals in the event of a protest to GAO Comp. Gen. It provides general procedures, and then it provides very detailed and specific procedures for both protests that arise prior to the awarding of a contract and protests that arise after the awarding of a contract.

A comprehensively documented acquisition contract file is the key to mitigating the risk of a sustainable protest. BP 7 & BP 8 stress the need for documenting the strengths, weaknesses, and risks associated with each proposal. They also stress the need for documenting the justifications for any price premiums that may result from tradeoffs between cost or price and past performance. CGP 7a drives home the point that when the documentation does not completely address the issues at hand, the Comp. Gen. will only consider post-protest explanations from Federal acquisition professionals that are credible and consistent with the documentation.

D. CONTRACT ADMINISTRATION

1. Documenting Contractor Performance & Closeout (Items 70 & 85)

The purpose for documenting a contractor's performance information periodically during contract performance is to motivate the contractor to maintain high quality performance or to improve inadequate performance before the next reporting period. [Ref.5: p. 2] The purpose for documenting a contractor's performance information at the closeout of a contract is to provide agencies with a final assessment of a contractor's overall performance. Both the interim and final performance information can be used as source selection information by Federal agencies.

The policies for the documentation of past performance information are found in FAR 42.15. The goal of these policies is to ensure a clear and concise recording of a contractor's performance on every contract, task order, or other contractual document exceeding \$100,000, based on a discussion with the contractor about recent performance. [Ref. 5:p. 4]

The specific procedures that govern the collection of PPI are found in FAR

42.1503 they state that:

- Agency procedures for the past performance evaluation system shall generally provide for input to the evaluations from the technical office, contracting office and, where appropriate, end users of the product or service.
- Agency evaluations of contractor performance prepared under this subpart shall be provided to the contractor as soon as practicable after completion of the evaluation. Contractors shall be given a minimum of 30 days to submit comments, rebutting statements, or additional information. Agencies shall provide for review at a level above the contracting officer to consider disagreements between the parties regarding the evaluation. The ultimate conclusion on the performance evaluation is a decision of the contracting agency. Copies of the evaluation, contractor response, and review comments, if any, shall be retained as part of the evaluation. These evaluations may be used to support future award decisions, and should therefore be marked "Source Selection Information". The completed evaluation shall not be released to other than Government personnel and the contractor whose performance is being evaluated during the period the information may be used to provide source selection information.
- Departments and agencies shall share past performance information with other departments and agencies when requested to support future award decisions. The information may be provided through interview and/or by sending the evaluation and comment documents to the requesting source selection official.
- Any past performance information systems, including automated systems, used for maintaining contractor performance information and/or evaluations should include appropriate management and technical controls to ensure that only authorized personnel have access to the data.
- The past performance information shall not be retained to provide source selection information for longer than three years after completion of contract performance.

CONTRACT ADMINISTRATION				
Initiation of Work and Modifications	Quality Assurance	Payment & Accounting	Special Terms	Contract Closeout or Termination
Planning	Monitoring and Problem Solving	Payment	Property Administration	Closeout
60. Contract Administration Planning	66. Monitoring, Inspecting, and Accepting	71. Invoices	80. Government Furnished Property	83. Claims
61. Post-Award Orientation Conferences	67. Delays	72. Assignment of Claims	81. Intellectual Property	84. Terminations
62. Consent to Sub-contracts	68. Stop Work	73. Limitation of Costs	Other	85. Closeout
Modifications	69. Commercial & Noncommercial Remedies	74. Unallowable Costs	82. Administering Socio-Economic Requirements	86. Fraud & Exclusion
63. Contract Modifications	70. Documenting Contractor Performance	75. Profit and Fee Adjustments		
64. Options		76. Collecting Contractor Debts		
65. Task and Delivery Order Contracts		Accounting		
		77. Accounting and Estimating Systems		
		78. Cost Accounting Standards		
		79. Defective Pricing		

Table 5.3. Contract Administration. After Ref. [15]

BP 11 stresses the point that assessing current contract performance is a basic “best practice” for good contract administration, and it is one of the most important tools available for ensuring good contractor performance.

CGP 3b provides further clarification for the limitations placed on the retention of PPI stated in FAR 42.1502. The Comp. Gen. has ruled that a contractor’s past performance may be considered for up to three years after the completion of contract

performance as a whole, rather than for only three years after each incident of performance under the contract.

With the increased emphasis on the use of PPI in making source selection determinations, the documentation of contractor performance will become an increasingly vital function in the Federal acquisition process. Federal acquisition professionals need to have a clear understanding not only of the FAR requirements, but also how those requirements have been modified by Comp. Gen. rulings.

E. SUMMARY

This chapter introduced the researcher's conceptual model of the Federal acquisition model. The three major phases and the twelve steps of the process were identified, and then eighty-six functions and tasks associated with the steps were identified. The researcher integrated the best practices and the Comp. Gen. principles into those functions and tasks that either have an impact on the collection and use of PPI or are impacted by the collection and use of PPI.

Once again, the researcher's intent for developing this integrated model was to present Federal acquisition professionals with a tool that effectively integrated PPI best practices and Comp. Gen. principles into their acquisition and contracting activities.

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VI. SUMMARY AND RECOMMENDATIONS

A. INTRODUCTION

This chapter provides a summary of the research presented in this thesis by reviewing the primary and the secondary research questions. Each question is restated, and then the answer(s) that were developed during the research are presented. The chapter concludes with the researcher's recommended areas for further study and analysis.

B. SUMMARY

The primary research question of this thesis dealt with the question of, "What would an analysis of published best practices guides and Comptroller General case decisions suggest are the best overall practices and key case principles for effective past performance information management, and how could these best practices and case principles be integrated into the acquisition and contracting processes of a buying activity?"

Five best practices and best value guides were reviewed in Chapter III, and from these guides, eleven overall best practices were identified. These overall best practices are listed in Appendix "A". In Chapter IV, one hundred and fifty-one protests that dealt with issues of past performance were examined. After identifying and analyzing several recent trends, the protests were arranged into eight categories that mirror the flow of tasks in the Federal acquisition process. From these eight categories, fourteen cases were

selected as examples to highlight the prevailing case principles that the Comp. Gen. has relied upon in determining the validity of protests that involve issues of PPI.

Chapter V introduced the researcher's interpretation of the current model of the Federal acquisition process. The overall best practices identified in Chapter III and the Comp. Gen. case principles from Chapter IV were integrated into the appropriate phases and tasks of the Federal acquisition process to illustrate how Federal acquisition professionals can more effectively utilize PPI in their acquisition and contracting processes.

The first secondary research question raised the question of, "How have policies evolved with respect to past performance?"

The research presented in Chapter II of this thesis has shown that in the eight years since the release of OFPP Policy Letter 92-5, the requirements for the collection and use of PPI have become more stringent. While in 1995 the threshold for the collection and use of PPI was established for contracts at or above \$1,000,000, that threshold has now been lowered to contracts that are at or above \$100,000.

The second secondary research question asked, "What best practice guides are available that provide guidance on the collection and evaluation of past performance information?"

In Chapter III, it was shown that there are numerous best practices guides available to the Federal acquisition workforce. Because of the rapid pace of acquisition reform and the sometimes-myopic focus of the drafters of these guides, Federal acquisition professionals are encouraged to review them to ensure that they are current

and accurate before using them. Also because no single Service or Agency has a comprehensive lessons learned database, acquisition professionals should be encouraged to review several of the guides to gain a fuller understanding of the overall best practices for the collection and use of PPI.

The third secondary research question posed the question, "What are the recommended methods for the evaluation of past performance?"

During the review of the best practices guides in Chapter III, it was noted time and again that at the heart of the evaluation process is the verification and validation of each offeror's PPI. Past performance evaluators are encouraged to use the most current and relevant PPI available. PPI can be obtained from a variety of sources:

- Other Federal Agencies and Government databases
- State and Local Governments
- Commercial contractors
- References provided by the offeror
- Quality certificates and awards

PPI evaluators are instructed to conduct reference checks and to look for patterns or trends. Whenever possible they are encouraged to contact two points of contact (POC) for each reference. Time permitting, face-to-face interviews are the preferred method for conducting reference checks, because they can provide more insight into the offeror's past performance than other methods.

Because the evaluation of PPI is highly subjective in nature, the best practices guides, reviewed by the researcher, overwhelmingly agreed that adjectival ratings schemes with narratives are the preferred method for recording the evaluation of PPI.

Several of the guides recognized that numerical rating systems can falsely imply precision and limit the flexibility of the decision making process. All the guides stressed that no matter which method of evaluation was used, all evaluations should be clearly documented to provide the Source Selection Authority with a clear picture of the strengths, weaknesses, and risks associated with each offeror's proposal.

The fourth secondary research question looked at, "How does industry view the use of PPI by Federal acquisition professionals?"

The literature review and the survey of industry representatives presented in Chapter III, and the interview with Deputy Under Secretary of Defense (Acquisition Reform) presented in Chapter IV all indicate that businesses are suspicious of the motives behind the use of PPI by Federal procurement personnel. One of their biggest concerns centers on the issue of being treated fairly in the selection process. A large majority of the businesses that deal with the Federal Government feel that the FAR allows too much latitude to evaluators, resulting in widely differing weighting and selection of evaluation factors among Federal agencies and military commands. [Ref. 9:p. 31] Businesses want a level playing field with regards to PPI, and they feel that they cannot be guaranteed one with the current PPI policies and the current PPI collection and tracking systems.

The fifth secondary research question dealt with the question of, "Under what circumstances is an offeror likely to file a protest over the use of PPI by a Federal acquisition professional?"

The research presented in Chapter V indicates that in today's competitive environment a company's bid and proposal money is a precious commodity, and when

companies decide to bid on Government contracts, they are making a conscious business decision to win the contract. When PPI is weighted heavily as a source selection factor, the research in this thesis indicates that companies may increase the level of risk that they are willing to accept by adjusting their pricing strategies in order to win the contract.

With this added risk and the pressures to acquire contracts in competitive markets, companies are more likely to file protests over the collection and use of PPI, whenever there is the appearance that the integrity of the procurement process has been breached, (e.g., whenever there is the perception that the evaluators failed to evaluate all of the proposals on the same basis and consistent with the solicitation requirements).

Also in highly competitive markets where there are businesses hungry for work, companies are more likely to file protests if the best value determinations to either pay or not to pay price premiums appear to be inconsistent with the weights assigned to the source selection factors identified in the solicitations. Furthermore, in the absence of timely and productive debriefs, unsuccessful offerors may initially file protests to determine if the PPI evaluations and the tradeoffs that led to the best value determinations had been documented in the contract file.

The sixth secondary research question asked, "What are the discernable trends in the number of sustained protests involving past performance in recent years?"

Chapter IV dealt with PPI protests that had been brought before the Comp. Gen. from Fiscal Year 1997 through June 2000. This timeframe was chosen because it coincided with the shifts in policy that began to place great emphasis on the collection and use of PPI. The research presented in Table 4.1 indicates that the number of past

performance protests as a percentage of merit protests has increased from 8% in 1997 to 30% in June 2000. The research also indicates that the number of past performance protests as a percentage of the total sustained protests has also seen a corresponding increase from 10% in Fiscal Year 1997 to 30% in Fiscal Year 2000.

The seventh secondary research question dealt with, "What elements of the acquisition contracting process will the Comp. Gen. review in making his decisions?"

The research presented in Chapter IV clearly shows that the Comp. Gen. will be looking for consistency of action by acquisition professionals throughout the Federal acquisition process, and the Comp. Gen. will be looking for fair and impartial treatment for all businesses that compete for Government contracts. When issues arise over the PPI evaluation criteria selected for a specific procurement, the Comp. Gen. will review the source selection files to determine if the evaluation factors were consistent with the requirement, and the Comp. Gen. will review the solicitation and the source selection evaluator's notes to ensure that the evaluation criteria were consistently applied to each offeror. The Comp. Gen. has stated that the evaluation of proposals is within the discretion of the procuring agency since it is responsible for defining its needs and the best method of accommodating them, and it must bear the burden arising from a defective evaluation. When protests arise over the use of best value tradeoffs, the Comp. Gen. will review the Source Selection Authority's final determination to ensure that any tradeoffs made between cost and past performance were in the best interest of the Government and that they were consistent with the solicitation's evaluation scheme.

The analysis of the case histories also shows that the Comp. Gen. has a preference for contemporaneous written documentation. The Comp. Gen. has ruled in past cases that an agency's evaluation judgments must be documented in sufficient detail to allow review of the merits of the protest, to show that they are not arbitrary, and to show that they are in accordance with the evaluation criteria listed in the solicitation. In those cases where the documentation did not completely address the issues at hand, the Comp. Gen. has been willing to consider post-protest explanations from credible contracting officials so long as the explanations were consistent with the documentation.

The eighth secondary research question asked, "What case principles can be extracted from the Comp. Gen. decisions that would aid acquisition professionals throughout the acquisition process?"

In preparing Chapter IV, one hundred and fifty-one PPI protests were analyzed and from this analysis it was noted that the Comp. Gen. based the rulings in the cases on one or more of fourteen key case principles. These principles are listed in Appendix D.

C. RECOMMENDATIONS FOR AREAS FOR FURTHER RESEARCH

- Conduct a joint review with representatives from the Marine Corps Systems Command (MARCORSYSCOM) of the current reform initiatives and the current best procurement practices, with the intent of rewriting the Marine Corps' Best Value Handbook. A rewrite of the existing handbook would provide MARCORSYSCOM acquisition personnel with guidance that is more reliable, responsive, and relevant to the current acquisition environment.
- Conduct follow-on analysis of protests brought before the GAO Comp. Gen. for fiscal years 2001 and beyond, to determine if there are any new case principles. New case principles have the potential to modify the current interpretations of the statutory (FAR) requirements that govern the actions of acquisition professionals. New interpretations of the statutory requirements by the Comp. Gen. will either allow acquisition professionals more or less discretion in carrying out the tasks required to

conduct fair and reasonable procurements. A particular area to investigate is the use of neutral past performance evaluations in best value procurements where past performance is the discriminating evaluation factor. Currently an offeror without relevant PPI may not be evaluated favorably or unfavorably on the factor of past contract performance, but this raises the question, "Doesn't a best value determination based on past performance as a key discriminator penalize an offeror with no prior past performance?" This is an issue that the Comp. Gen. will need to rule on in the near future.

- Conduct an analysis of cases involving past performance issues brought before the Court of Federal Claims, to identify case principles and trends. Here again the intent would be to analyze the cases to determine if there are any key case principles that would assist Federal acquisition professionals to more effectively incorporate the collection and use of PPI into the acquisition process. Trends that are identified here would also indicate how well Federal acquisition professionals are doing with regards to the collection and use of PPI.
- Conduct an analysis of past performance protests that have been resolved through the use of alternative disputes resolution (ADR) methods, to gain insight into the total population of past performance protests. An analysis of the total population of PPI protests would provide greater insight into how well the Federal acquisition workforce has institutionalized the use of PPI in source selections.
- Conduct a cost analysis of past performance protests to determine the true costs of these protests in terms of lost procurement time and money. If one of the goals of the Revolution in Business Affairs is to deliver high quality goods and services in less time and at a lower total cost, then how has the increased reliance on PPI assisted the Federal acquisition community in achieving that goal? Follow on research could look at what are the potential costs and benefits of either increasing or decreasing the requirements for the collection and use of PPI.
- Conduct an analysis of future Federal Legislative actions or Executive Branch reform initiatives that may potentially impact the collection and use of past performance information by the Federal acquisition workforce. This area of research goes hand in hand with the previous area. Here the researcher would be analyzing the proposed legislation or reform initiatives to determine the associated costs and benefits that would have impact upon the Federal acquisition community.

APPENDIX A. BEST PRACTICE PRINCIPLES

- BP. 1 Tailor the use and evaluation of past performance information to fit the needs of the acquisition.
- Weight past performance to ensure that it is a valid discriminator.
 - Limit sub-factors to true discriminators. Recommended PPI sub-factors are:
 - Quality of performance
 - Cost performance
 - Schedule performance
 - Business relations
- BP. 2 Invest in command or program resources needed for a competent and well documented best value source selection.
- Include the source selection authority as an active participant
 - Train all the evaluators in best practices
- BP. 3 Conduct pre-solicitation exchanges of information with industry to explain the approach you will use to evaluate performance risk. (e.g., draft solicitations & pre-solicitation conferences)
- Pre-solicitation exchanges can help to ensure that potential offerors have a clear understanding of how past performance will be evaluated
- BP. 4 Structure the solicitation to communicate effectively to potential offerors.
- Encourage new entrants to the market to identify other related past performance information
- BP. 5 Use the most relevant, recent past performance information available in making the source selection decision. PPI can come from a variety of sources:
- Other Federal Agencies and Government databases
 - State and Local Governments
 - Commercial contractors
 - References provided by the offeror
 - Quality certificates and awards
- BP. 6 Conduct references checks and look for patterns or trends. Whenever possible request two POC's for each reference. Use:

- Questionnaires
 - Face to face interviews. Keep in mind that these provide more insight than other methods; they can expose problems with the contractor that can be discussed during negotiations
 - Telephone interviews
 - Some combination of the above methods
- BP. 7 Document strengths, weaknesses, risks and the associated value of proposals to support the cost/past performance tradeoff.
- Recognize that numerical rating systems can imply false precision and limit flexibility in the decision making process
- BP. 8 Justify price premiums with tradeoff documentation regardless of the selected proposal's cost or past performance superiority.
- The greater the price premium, the greater the documentation must show the worth
- BP. 9 Ensure that the source selection decision is consistent with the relative weights assigned to the evaluation factors in the solicitation.
- BP. 10 Conduct a proper and timely debriefing.
- Debriefings provide unsuccessful offerors with the opportunity to learn about their strengths and weaknesses and how to improve future proposals submitted to the Government
 - Offerors rely heavily on information provided during debriefing sessions to influence their decisions regarding filing protests
- BP. 11 Assess current contract performance; it is a basic "best practice" for good contract administration, and it is one of the most important tools available for ensuring good contractor performance.

APPENDIX B. PAST PERFORMANCE RESEARCH SURVEY

How might the following scenarios affect your pricing strategies?

- You receive an RFP, which indicates that past performance will be weighted significantly more than cost or price. (Past performance 50%, cost or price 20%, and technical 30%)
 - In the first case, you are confident that your past performance rating will be higher than your competitors
 - In the second case, you feel that your past performance rating will be somewhat less than your competitors
- You receive an RFP, which indicates that past performance will be weighted significantly less than cost or price. (Cost or price 70%, technical 20%, past performance 10%)
 - In the first case, you are confident that your past performance rating will be higher than your competitors
- In the second case, you are confident that your past performance rating will be somewhat less than your competitors

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APPENDIX C. PAST PERFORMANCE PROTESTS

CASES WITH SUSTAINED PAST PERFORMANCE PROTESTS

Protestor	B-Number	Date
Biospherics, Inc.	B-278278	Jan. 14, 1998
SCIEN TECH, Inc.	B-277805.2	Jan. 20, 1998
Foundation health Federal Services, Inc.	B278189.3	Feb. 4, 1998
U.S. Property Management Service	B-278727	Mar. 6, 1998
Aerospace Design & Fabrication, Inc.	B-278896.2	May 4, 1998
Century Environmental Hygiene, Inc.	B-279378	Jun. 5, 1998
Consolidated Engineering Services, Inc.	B-279565.2	Jun. 26, 1998
Trifax Corporation	B-279561	Jun. 29, 1998
Technical Support Services, Inc.	B-279665	Jul. 8, 1998
Possehn Consulting	B-278579.2	Jul. 29, 1998
Professional Gunsmithing Inc.	B-279048.2	Aug. 24, 1998
GTS Duratek, Inc.	B-280511.2	Oct. 19, 1998
Intellectual Properties, Inc.	B-280803	Nov. 19, 1998
Teltara Inc.	B-280922	Dec. 4, 1998
MCR Federal, Inc.	B-280969	Dec. 14, 1998
Opti-Lite Optical	B-281693	Mar. 22, 1999
ENMAX Corporation	B-281965	May 12, 1999
ACS Government Solutions Group, Inc.	B-282098	Jun. 2, 1999
Universal Building Maintenance, Inc.	B-282456	Jul. 15, 1999
ATA Defense Industries, Inc.	B-282511	Jul. 21, 1999
Nova Group, Inc.	B-282947	Sep. 15, 1999
Beneco Enterprises, Inc.,	B-283154	Oct. 13, 1999
OneSource Energy Services, Inc.	B-283445	Nov. 19, 1999
Kathpal Technologies, Inc.	B-283137.3	Dec. 30, 1999
Saco Defense Corporation	B-283885	Jan. 20, 2000
North America, Inc.	B-283743.2	Feb. 16, 2000
CRAssociates, Inc.	B-282075	Mar. 15, 2000
Future-Tec Management Systems, Inc.	B-283793	Mar. 20, 2000
Maritime Berthing, Inc.	B-284123.3	Apr. 27, 2000
Lloyd H. Kessler, Inc.	B-284693	May 24, 2000
Computer Products, Inc.	B-284702	May 24, 2000
J&J Maintenance, Inc.	B-284708.2	Jun. 5, 2000

CASES WITH DENIED PAST PERFORMANCE PROTESTS

Protestor	B-Number	Date
Dawco Construction, Inc	B-278048.2	Jan. 2, 1998
J & E Associates, Inc	B-278187	Jan. 5, 1998
BFI Waste Systems	B-278223	Jan. 8, 1998
Compania De Asesoria Y Comerico S.A.	B-278358	Jan. 20, 1998
High Country Contracting	B-278649	Jan. 30, 1998
U.S. Technology Corporation	B-278584	Feb. 17, 1998
Davies Rail and Mechanical Works, Inc.	B-278260	Feb. 25, 1998
Battelle Memorial Institute	B-278673	Feb. 27, 1998
Modern Technologies Corp.	B-278695	Mar. 4, 1998
Xeno Technix, Inc	B-278738	Mar. 11, 1998
Rockhill Industries, Inc.	B-278797	Mar. 16, 1998
RAMCOR services Group, Inc.	B-276633.2	Mar. 23, 1998
San Diego Beverage & Kup, Inc.	B-278881	Mar. 24, 1998
Techsys Corporation	B-278904	Apr. 13, 1998
NAHB Research Center, Inc.	B-278876	May 4, 1998
Aerospace Design & Fabrication, Inc.	B-278896.2	May 4, 1998
PCT Services, Inc.	B-279168	May 12, 1998
Protection Total / Magnum Security, S.A.	B-278129.4	May 12, 1998
Ideal Electronic Security Company	B-279221	May 19, 1998
Quaker Valley Meats, Inc.	B-279217	May 20, 1998
Advanced Data Concepts, Inc.	B-277801.4	Jun. 1, 1998
Dual, Inc	B-279295	Jun. 1, 1998
WECO Cleaning Specialists, Inc.	B-279305	Jun. 3, 1998
Source of One Management	B-278044.4	Jun. 12, 1998
TEAM Support Services, Inc.	B-279379.2	Jun. 22, 1998
Hard Bodies, Inc.	B-279543	Jun. 23, 1998
Hago-Cantu Joint Venture	B-279637.2	Jul. 20, 1998
Acepex Management Corporation	B-279173.5	Jul. 22, 1998
Pacific Ship Repair and Fabrication, Inc.	B-279793	Jul. 23, 1998
SDV Telecommunications	B-279919	Jul. 29, 1998
Apache enterprises, Inc.	B-278855.2	Jul. 30, 1998
YKK (U.S.A.), Inc.	B-280447	Aug. 28, 1998
General Security Services Corporation	B-280388	Sep. 25, 1998
Ervin & Associates, Inc.	B-279161.2	Oct. 13, 1998
Rohmann Services, Inc.	B-280154.2	Nov. 16, 1998
Durocher Dock & Dredge	B-280853	Nov. 24, 1998

Protestor	B-Number	Date
Lear Siegler Services, Inc.	B-280834	Nov. 25, 1998
Environmental Tectonics Corporation	B-280573.2	Dec. 1, 1998
Westinghouse Government	B-280928	Dec. 4, 1998
Venture Productions	B-280872	Dec. 9, 1998
MCR Federal. Inc.	B-280969	Dec. 14, 1998
PharmChem Laboratories, Inc	B-280988	Dec. 17, 1998
PCT Services, Inc.	B-281046	Dec. 22, 1998
RTF/TCI/EAI Joint Venture	B-280422.3	Dec. 29, 1998
Saratoga Medical Center, Inc.	B-281350	Jan. 27, 1999
Bulova Technologies LLC	B-281384	Feb. 3, 1999
Saratoga Medical Center, Inc.	B-281388	Feb. 3, 1999
Orbital Technologies Corporation	B-281453	Feb. 17, 1999
Stratus Systems, Inc.	B-281645	Feb. 24, 1999
Borders Consulting, Inc.	B-281606	Mar. 10, 1999
Kellie W. Tipton Construction Company	B-281331.3	Mar. 22, 1999
LB&L Associates, Inc.	B-281706	Mar. 24, 1999
SGT. Inc.	B-281773	Apr. 1, 1999
Korreck Optical	B-281800	Apr. 9, 1999
Construction Technology Laboratories, Inc.	B-281836	Apr. 12, 1999
Marathon Watch Company Limited	B-281876	Apr. 22, 1999
Marquette Medical Systems, Inc.	B-277827.5	Apr. 22, 1999
Walsh Dohmen Southeast	B-281904	Apr. 29, 1999
NAPA Supply of Grand Forks, Inc.	B-280996.2	May 13, 1999
GCI Information services, Inc	B-282074	May 28, 1999
TRW, Inc.	B-282162	Jun. 9, 1999
Advanced Data Concepts, Inc.	B-280967.8	Jun. 14, 1999
Life Oxygen & Health Services, Inc.	B-282243	Jun. 18, 1999
AmClyde Engineering Products Co. Inc.	B-282271	Jun. 21, 1999
Inland Service Corporation	B-282772	Jun. 21, 1999
Support Services, Inc.	B-282407	Jul. 8, 1999
U.S. Constructors, Inc.	B-282776	Jul. 21, 1999
AdvanChip Corporation	B-282571	Jul. 29, 1999
Allied Technology Group, Inc.	B-282739	Aug. 19, 1999
Olympus Building Services, Inc.	B-282887	Aug. 31, 1999
Infrared Technologies Corporation	B-282912	Sep. 2, 1999
D.F. Zee's Fire Fighter Catering	B-280767.4	Sep. 10, 1999
Engineering Air Systems	B-283011	Sep. 21, 1999
Acepex Management Corporation	B-283080	Oct. 4, 1999

Protestor	B-Number	Date
The Communities Group	B-283147	Oct. 12, 1999
GSA, Inc.	B-283177	Oct. 18, 1999
J.A. Jones Grupo de Servicios, SA	B-283234	Oct. 25, 1999
J&E Associates, Inc.	B-283448	Nov. 3, 1999
Rotech Medical Corporation	B-283295.2	Nov. 8, 1999
Ideal Electronic Security Company, Inc.	B-283398	Nov. 10, 1999
Olin Corporation	B-283401	Nov. 15, 1999
Crescent Helicopters	B-283469.2	Nov. 30, 1999
Simborg Development, Inc.	B-283538	Dec. 7, 1999
BioGenesis Pacific, Inc.	B-283738	Dec. 14, 1999
Advanced Communications Systems, Inc.	B-283650	Dec. 16, 1999
B. Diaz Sanitation, Inc	B-283827/28	Dec. 27, 1999
Mid Pacific Environmental	B-283309.2	Jan. 10, 2000
Valenzuela Engineering, Inc.	B-283889	Jan. 13, 2000
MG Industries	B-283010.3	Jan. 24, 2000
Eastco Building Services, Inc.	B-283972.2	Feb. 10, 2000
Universal Fabric Structures, Inc.	B-284032	Feb. 10, 2000
A.G. Cullen Construction, Inc.	B-284049.2	Feb. 22, 2000
Champion Service Corporation	B-284116	Feb. 22, 2000
NV Services	B-284119.2	Feb. 25, 2000
Clean Venture, Inc.	B-284176	Mar. 6, 2000
Dellew Corporation	B-284227	Mar. 13, 2000
Dynacs Engineering Company, Inc.	B-284234	Mar. 17, 2000
Schaeffer Eye Center	B-284268	Mar. 20, 2000
Butt Construction Company, Inc.	B-284270	Mar. 20, 2000
PEMCO World Air Services	B-284240.3	Mar. 27, 2000
TiHu, Inc.	B-284360	Mar. 31, 2000
M-Cubed Information Systems, Inc.	B-284445	Apr. 19, 2000
Crown Support Services, Inc.	B-284471	Apr. 21, 2000
WinStar Federal Services	B-284617	May 17, 2000
Marathon Construction Corporation	B-284816	May 22, 2000
Molina Engineering, Ltd.	B-284895	May 22, 2000
KELO, Inc.	B-284601	Jun. 7, 2000
Information Network Systems, Inc.	B-284854	Jun. 12, 2000
Gray Personnel Services	B-285002	Jun. 26, 2000

APPENDIX D. COMPTROLLER GENERAL'S PRINCIPLES

1. EVALUATION PLANS

- a. Alleged deficiencies in the application of an agency's evaluation plan does not provide a basis for questioning the validity of the award selection; these plans are internal agency instructions and as such do not give outside parties any rights. Consequently, the fact that an agency may not have followed its internal evaluation instructions is not a valid basis for protest. Matter of: General Security Services Corporation, B-280388; B-280388.2, September 25, 1998.
- b. As a preliminary matter, it is the solicitation, not the internal evaluation plan that is the touchstone for whether offerors have been treated fairly in an evaluation. Requirements stated in evaluation and source selection plans are not disclosed to offerors, and thus, do not give outside parties any rights. Matter of: Enmax Corporation, B-281965, May 12, 1999.

2. EVALUATION CRITERIA/FACTORS

Agencies enjoy broad discretion in selecting evaluation criteria and the Comptroller General will not object to a solicitation's evaluation scheme so long as it reasonably relates to the agency's needs. The fact that a solicitation's requirements or evaluation criteria may favor the agency's actual needs, and the advantage enjoyed by a particular firm is not the result of improper government action. Matter of: Borders Consulting, Inc., B-281606, March 10, 1999.

3. PAST PERFORMANCE

- a. Where a solicitation requires the evaluation of offerors' past performance, an agency has the discretion to determine the scope of the offerors' performance histories to be considered provided all proposals are evaluated on the same basis and consistent with the solicitation requirements. Matter of: OMV Medical, Inc.; Saratoga Medical Center, Inc., B-281606, February 3, 1999.
- b. A contractor's past performance may be considered for up to three years after the completion of contract performance as a whole, rather than for only three years after each incident of performance under the contract. Matter of: D.F. Fire Fighter Catering., B-280767.4, September 10, 1999.
- c. There is no requirement that an agency contact all of an offeror's references. Matter of: Kellie W. Tipton Construction Company, B-281331.3, March 22, 1999.

- d. An agency may not ignore prior performance information of which it is aware. Matter of: Consolidated Engineering Services Inc., B-279565.2; B-279565.3, June 26, 1998.

4. BEST VALUE EVALUATIONS

- a. When making "Best Value Determinations", the Contracting Officer's decisions concerning tradeoffs between past performance and cost/price will be judged to be reasonable and consistent, provided that it can be shown that the tradeoffs are in the best interest of the government and that they are consistent with the solicitation's evaluation scheme. Matter of: Marathon Watch Company Limited, B-281876; B-281876.2, April 22, 1999.
- b. When price is secondary to non-cost/price factors, an agency may not select a lower-priced, lower-scored proposal, unless it determines that the premium involved in selecting a higher-rated, higher-priced proposal is not justified. However, when selection officials reasonably regard proposals as being essentially equal, price can become the determining factor in making award notwithstanding that the evaluation criteria assigned price less importance than non-cost/price factors. Matter of: Beneco Enterprises, Inc., B-283154, October 13, 1999.
- c. In a negotiated procurement with a best value evaluation plan, point scores are useful as guides, but they do not mandate automatic selection of a particular proposal. Whether a given point spread between two competing proposals indicates a significant superiority of one proposal over another depends upon the facts and circumstances of each procurement and is primarily a matter within the discretion of the procuring agency. The question of whether a difference in point scores is significant is for determination on the basis of what that difference might mean in terms of contract performance and what it would cost the government to take advantage of it. Matter of: Schaeffer Eye Center, B-284268, March 20, 2000.

5. EVALUATION OF OFFERS

The evaluation of proposals is within the discretion of the procuring agency since it is responsible for defining its needs and the best method of accommodating them, and must bear the burden arising from a defective evaluation. The Comptroller General's function is to examine the agency evaluation to ensure that it was reasonable and consistent with the stated evaluation factors. Matter of: LB&B Associates, B-281706, March 24, 1999.

6. BIAS OF GOVERNMENT OFFICIALS

Because government officials are presumed to act in good faith, we do not attribute unfair or prejudicial motives to them on the basis of inference or supposition. Where a protester alleges bias on the part of government officials, the protester must provide credible evidence clearly demonstrating a bias against the protester or for the awardee and showing that the agency's bias translated into action that unfairly affected the protester's competitive position. Matter of: J.A. Jones Grupo de Servicio, SA, B-283234, October 25, 1999.

7. PROPOSAL EVALUATION--DOCUMENTATION

- a. Agency evaluation judgments must be documented in sufficient detail to allow review of the merits of a protest, to show that they are not arbitrary, and to show that they are in accord with the evaluation criteria listed in the RFP. Matter of: J&J Maintenance, Inc., B-284708.2; B-284708.3, June 5, 2000.
- b. When contemporaneous documentation does not completely address the issues at hand, the Comptroller General will consider post-protest explanations from contracting officials that are credible and consistent with the documentation. Matter of: Support Services, Inc., B-282407; B-282407.2, July 8, 1999.

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APPENDIX E. FEDERAL ACQUISITION PROCESS MODEL

PROCUREMENT PLANNING			
Determination of Need	Requirement Definition	Acquisition Planning	
1. Forecasting Requirements	4. Requirement Documents (SOW/SOO)	Acquisition IPTs	Selection Factors
2. Purchase Requests	5. Use of Government Property & Supply Sources	8. Source Selection Authority	20. Cost/Price Related Factors
3. Funding	6. Services	9. Source Selection Advisory Council	21. Non-Cost/Price Evaluation Factors
	7. Procurement Request	10. Source Selection Evaluation Board	Terms and Conditions
		11. Risk Management	22. Determination & Finding (D&Fs)
		12. Method of Procurement	23. Justification & Approval (J&As)
		Extent of Competition	24. Contract Types- Pricing Arrangements
		13. Competition Requirements	25. Recurring Requirements
		14. Lease vs. Purchase	26. Letter Contracts- Unpriced Contracts
		15. Commerciality Determination	27. Contract Financing
		16. SBA Set-Asides	28. Need for Bonds
		17. 8(a) Procurements	29. Method of Payment
		18. Unsolicited Proposals	30. Development of Source Selection Plan (SSP)
		19. Market Research	30. Development of Source Selection Plan (SSP)

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CONTRACT FORMATION			
Solicitation	Evaluation -Sealed Bidding	Evaluation -Competitive Proposal	Contract Award
Pre-Solicitation	Bid Evaluation	Proposal Evaluation	Selection for Award
31. Publicizing Proposed Procurement	38. Processing Bids	43. Processing Proposals	53. Source Selection Authority's Final Award Determination
32. Draft Solicitation Preparation	39. Bid Acceptance Periods	44. Responsiveness & Responsibility Determinations	54. Responsibility Determination
33. Pre-award Inquiries	40. Late Bids	45. Awarding without Discussions (Clarifications)	55. Preparing Award
34. Pre-Solicitation Conferences	41. Bid Opening/ Bid Prices	46. DCAA/ DCMA information	56. Award and Notices
Solicitation of Offerors	42. Responsiveness & Responsibility Determinations	47. Source Selection Evaluation Board Findings *Past Performance *Cost *Technical	57. Mistakes in Offers
		48. Competitive Range Determination (Communications)	58. Conduct Debriefings
		49. Fact Finding	59. Protests
35. Final Solicitation Preparation		50. Negotiation Strategy	
36. Issuance of Solicitation		51. Conducting Negotiations (Discussions)	
37. Amending/ Canceling Solicitation		52. Source Selection Advisory Council's Comparative Evaluation	

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CONTRACT ADMINISTRATION				
Initiation of Work and Modifications	Quality Assurance	Payment & Accounting	Special Terms	Contract Closeout or Termination
Planning	Monitoring and Problem Solving	Payment	Property Administration	Closeout
60. Contract Administration Planning	66. Monitoring, Inspecting, and Accepting	71. Invoices	80. Government Furnished Property	83. Claims
61. Post-Award Orientation Conferences	67. Delays	72. Assignment of Claims	81. Intellectual Property	84. Terminations
62. Consent to Sub-contracts	68. Stop Work	73. Limitation of Costs	Other	85. Closeout
Modifications	69. Commercial & Noncommercial Remedies	74. Unallowable costs	82. Administering Socio-Economic requirements	86. Fraud & Exclusion
63. Contract Modifications	70. Documenting Contractor Performance	75. Profit and Fee Adjustments		
64. Options		76. Collecting Contractor Debts		
65. Task and Delivery Order Contracts		Accounting		
		77. Accounting and Estimating Systems		
		78. Cost Accounting Standards		
		79. Defective Pricing		

Modified By Researcher from [FAP, March 1999, pp. 5-9]

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18. Interview: Mr. Stan Soloway, Deputy Under Secretary of Defense (Acquisition Reform), Office of the Secretary of Defense (Acquisition, Technology, and Logistics), August 31, 2000.
19. Matter of: Beneco Enterprises, Inc., B-283154, October 13, 1999.
20. Matter of: Borders Consulting, Inc., B-281606, March 10, 1999.
21. Matter of: Consolidated Engineering Services Inc., B-279565.2; B-279565.3, June 26, 1998.
22. Matter of: D.F. Zee's Fire Fighting Catering, B-280767, September 10, 1999.
23. Matter of: Enmax Corporation, B-281965, May 12, 1999.
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